

**TILA-RESPA INTEGRATED DISCLOSURE:  
EXAMINING THE COSTS AND BENEFITS  
OF CHANGES TO THE REAL ESTATE  
SETTLEMENT PROCESS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
HOUSING AND INSURANCE  
OF THE  
COMMITTEE ON FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
FIRST SESSION

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**TILA-RESPA INTEGRATED DISCLOSURE:  
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**Thursday, May 14, 2015**

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON HOUSING  
AND INSURANCE,  
COMMITTEE ON FINANCIAL SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2:02 p.m., in room 2128, Rayburn House Office Building, Hon. Blaine Luetkemeyer [chairman of the subcommittee] presiding.

Members present: Representatives Luetkemeyer, Westmoreland, Pearce, Ross, Barr, Rothfus, Williams; Green, Moore, Ellison, and Beatty.

Ex officio present: Representative Hensarling.

Also present: Representative Sherman.

Chairman LUETKEMEYER. Welcome, everybody. Welcome to our new digs. We had a hearing this morning, and this is our initial subcommittee hearing. Sorry to see you all so far away, but this is the new way we are going to have to do business here as a result of remodeling efforts. But thank you for being here.

The Subcommittee on Housing and Insurance is hereby called to order. And without objection, the Chair is authorized to declare a recess of the subcommittee at any time. I do want to mention that we have votes coming up probably in the 2:30 to 2:45 range. So unfortunately, we will probably be leaving shortly for a little while. But we hope to get through the testimony. We will see how it works here.

Today's hearing is entitled, "TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process."

Before we begin, I would like to thank the witnesses for appearing before the subcommittee today. We look forward to your testimony. And I will now recognize myself for 3 minutes to give an opening statement.

For the majority of American consumers, the purchase of a home is the most important and expensive financial transaction they will ever make, and the process in place today is confusing and burdensome. Twenty-three percent of respondents in an October 2013 poll by USA Today said that they would rather gain 10 pounds than go

through the mortgage process. Seven percent said they would rather spend a night in prison than go through the mortgage process.

What does that tell you about the system? I think it tells you the system needs to be fixed, and we owe it to the consumers to make sure this process works and is as straightforward and simple as possible.

August is one of the busiest times of the year for home closings, when thousands of homeowners will sit at a closing table on or after August 1st. It remains to be seen whether or not parties will be ready for the new TILA-RESPA Integrated Disclosure process, or TRID. We continue to hear from businesses that tell us industry and vendors simply aren't ready for TRID or the liability that accompanies it. This is despite having spent, according to some estimates, upwards of \$100 million on new systems, vendors, and education.

Dramatic changes to the settlement process, paired with the reset provisions included in TRID, have the potential to unnecessarily delay closings and cause a ripple effect throughout the real estate market. Strict enforcement and increased liability for lenders will only exacerbate the situation. This is particularly true for small businesses party to real estate closings that are likely to be left at the table with greater exposure and limited guidance from the Consumer Financial Protection Bureau (CFPB).

For years, Congress, consumer advocates, and industry groups have called for simpler settlements. To be clear, I fully support efforts to streamline the process. No one disagrees that there is a need for improvement. But we need to go about this in an appropriate manner and take the time to ensure that consumers aren't negatively impacted by something designed for them.

Consumers, industry, and the CFPB itself stand to benefit from a delayed enforcement period. I imagine that is why the Center for Responsible Lending joined in a letter with the industry and has since reiterated its support for a period of restrained enforcement and liability.

At the end of the day, what is most important is that we get this right. Part of that is ensuring industry has the information it needs to facilitate a smooth transition. We owe it to consumers to make sure this process is worthwhile and does more than give away 5 pages of disclosure and replace it with 10 pages. Given the approximately \$100 million price tag and the years of work we will need to put a disclosure system in place that is clear and direct, I am not sure TRID does that.

I look forward to today's testimony and gaining a better understanding of what changes to the settlement process will mean for everyone sitting at the closing table.

The Chair now recognizes Mrs. Beatty from Ohio, who today is filling in for the ranking member of the subcommittee, Mr. Cleaver. She is recognized for 5 minutes for an opening statement.

Mrs. BEATTY. Thank you, Mr. Chairman. And thank you for holding this timely hearing. I also thank our witnesses today.

It is my honor to be here pinch hitting for Congressman Cleaver. And we are all here for the consumers, and we have heard that. But today we are here to hopefully have a better understanding of the Consumer Financial Protection Bureau's TILA-RESPA Inte-



grated Disclosures and what the implementation of these rules will mean both to the industry and to the consumers. These disclosures aim to reduce the overlapping of the information received by the consumers, as well as to simplify the overall origination process, which I support.

I also applaud the CFPB's efforts in engaging in consumer and industry research to put forth a good rule. In fact, just yesterday I heard from a large contingency of the Ohio Association of REALTORS® who are accepting of this new rule. They are not asking for change or to challenge the rule, but what they have expressed to me is that they would like to kind of have a test run, so to speak, of the rule. They need a preseason to work out all the nuances in the new disclosures form.

I liken that to a new rule in my district when people were speeding and they decided that they were going to put up cameras. Well, they gave them a 30-day notice to kind of get used to it before they enforced it.

At the end of the day, we are here to bridge the gap between effective compliance and ensuring that the rule's implementation is in the best interests of both the REALTORS® and the home buyers. We have heard the stories from the chairman about how difficult it can be for those who are buying their first home, and any of you, if you have purchased a home, you also know about the plethora of paperwork and the forms that have to be signed.

And in the aftermath of the 2008 housing crisis, I hope to learn today that all consumers, both buyers and sellers, will have the proper education and understanding of the TILA-RESPA disclosures to make the mortgage loan closing process as fluid and seamless as possible.

Thank you, Mr. Chairman, and I yield back the balance of my time.

Chairman LUETKEMEYER. Thank you, Mrs. Beatty.

Today, we welcome to the hearing four great witnesses: Ms. Cindy Lowman, president, United Bank Mortgage Corporation, United Bank of Michigan, testifying on behalf of the American Bankers Association; Ms. Diane Evans, vice president, Land Title Guarantee Company, testifying on behalf of the American Land Title Association; Ms. Laurie Goodman, director, Housing Finance Policy Center, the Urban Institute; and Mr. Chris Polychron, executive broker, 1st Choice Realty, and 2015 president, the National Association of REALTORS®, testifying on behalf of the National Association of REALTORS®.

Thank you all for being here.

With that, you will each be recognized for 5 minutes to give your testimony.

Ms. Lowman, you get to start today, 5 minutes. Thank you very much.

**STATEMENT OF CINDY LOWMAN, PRESIDENT, UNITED BANK MORTGAGE CORPORATION, UNITED BANK OF MICHIGAN, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION (ABA)**

Ms. LOWMAN. Chairman Luetkemeyer, Mrs. Beatty, my name is Cindy Lowman. I am president of United Bank Mortgage Corporation, which is a wholly owned subsidiary of United Bank of Michi-

gan. We are a \$468 million community bank based in Grand Rapids.

I also serve as the chairman of the ABA Mortgage Markets Committee. I am pleased to be here today to testify on behalf of the ABA on concerns over the pending implementation of the Truth in Lending and the Real Estate Settlement Procedures Act Integrated Disclosures, known as TRID.

These rules are scheduled to go into effect on August 1st this year. Between now and then, banks and their vendors must undertake a tremendous amount of work to comply with these rules. In cases like mine, banks may not even have the third-party systems that they need until after the deadline.

The real impact of this rushed deadline will be felt by consumers who will face costly delays in getting the credit they need to buy a home. This is why we are joining with members of this committee in requesting that the CFPB formally announce a clear delay of this enforcement.

TRID will impact every mortgage loan made in the United States. It is critical that this rule is implemented smoothly so that it does not end up hurting creditworthy customers who want to own a home. Although intended to simplify the disclosure process, if not implemented properly, TRID could add significant complications that will end up costing consumers.

TRID's objective of integrating consumer disclosures is commendable. TILA and RESPA both serve important purposes. But the disclosure regimens developed under each statute have swelled in complexity. The sheer volume of documentation overwhelms the borrower, and true disclosure has become virtually meaningless.

ABA and consumers and industry groups have sought for years to streamline and simplify this process. The CFPB, to its credit, undertook this project in an open and responsive process and incorporated many changes urged by industry participants. Despite this, the new forms remain lengthy and intimidating to the average customer. Given the scope and complexity of these new rules, this implementation of regulation will impose high costs on all lenders and consumers.

Our most urgent concern right now is the looming August 1st deadline. Between now and then, banks must fully review all of the final rules; implement new systems, processes, and forms; train staff; and test these changes for quality assurance before we bring them online.

Implementation is further complicated by the fact that most smaller community banks rely on vendors for regulatory compliance and the accompanying software updates and system upgrades. An alarming number of banks report their vendors are not yet ready to provide the necessary updates to individual institutions. An ABA survey shows that 79 percent of banks cannot verify that they will have the systems by the deadline.

For some institutions, stopping any mortgage lending is the answer to this deadline because the consequences are too great if the implementation is not done correctly. At my bank, we are still waiting for systems from our third-party providers and do not expect some of the product offerings to be available in our software system by the August 1st deadline. This means that as of the dead-

line, I will be able to take mortgage applications but will not be able to close certain loans where I do not have systems in place.

We must get this right for the sake of our customers, our bank's representation, and to promote the recovery of the housing market. There are very reasonable solutions that Congress envisioned that enabled the Bureau to avoid the negative consequences of an arbitrary August 1st deadline.

ABA strongly supports the efforts of Chairmen Luetkemeyer and Neugebauer and Representatives Maloney and Barr in asking the Bureau to treat the time period between August 1st, 2015, and December 31, 2015, as a hold harmless period for enforcement and liability under the new rules and to formally announce such period to ensure that the prudential regulators and secondary market stakeholders do the same.

ABA thanks Representatives Pearce and Sherman for introducing H.R. 2213, which provides for a hold harmless period. We urge quick action to avoid the potential harm to our mortgage customers.

The bottom line is this: These are complex rules, and implementing them must be done in a careful manner. If implementation is rushed ahead of schedule, it will only lead to confusion and delays that will be costly for consumers.

Thank you. And I would be happy to answer any questions.

[The prepared statement of Ms. Lowman can be found on page 57 of the appendix.]

Chairman LUETKEMEYER. Thank you, Ms. Lowman. We will get you a prize. I think you are one of the few witnesses I have ever seen in this committee who actually finished significantly ahead of schedule. Thank you very much.

Ms. Evans, you are now recognized for 5 minutes.

**STATEMENT OF DIANE EVANS, VICE PRESIDENT, LAND TITLE GUARANTEE COMPANY, AND PRESIDENT, AMERICAN LAND TITLE ASSOCIATION (ALTA), TESTIFYING ON BEHALF OF ALTA**

Ms. EVANS. Chairman Luetkemeyer, Ranking Member Beatty, and subcommittee members, my name is Diane Evans, and I am vice president of Land Title Guarantee Company, a title insurance agent in Colorado.

I joined Land Title Guarantee Company 34 years ago when I opened a branch in my hometown. I also have the privilege of serving as the president of the American Land Title Association, the national trade association representing the abstract real estate settlement and land title insurance industry.

ALTA has more than 5,400 member companies ranging from small one-person operations to large publicly traded companies. Our industry employs more than 108,000 professionals, and our members have offices in every county in the United States.

In 78 days, our industry faces its biggest regulatory change I have seen in my 34 years in the business. I am talking about the implementation of the Consumer Financial Protection Bureau's TILA-RESPA Integrated Disclosures, or TRID, as you are hearing it called.

As president of ALTA, I have had the opportunity and privilege to travel across the country and talk to lenders, to real estate agents, and to settlement professionals about this new regulation. The main lesson from those conversations is that collaboration is crucial. The new regulation is overreaching, it is expensive, and it is confusing, not only for small companies, but for large companies as well.

Implementing TRID requires more than just simply updating our systems for two new forms. It requires a paradigm shift in the way we do business and the way real estate settlements occur across the United States. Our industry will invest almost \$1.3 billion to comply with this regulation. After August 1st, if a consumer better understands their transaction, it will be worth it.

Let me tell you a little about my company. We have been spending a great amount of time coordinating with our real estate community. We have already trained over 1,000 real estate agents. We have worked with 300 lenders and we have worked with their employees and over 60 homebuilder employees to understand this new process. It has taken many of our staff away from their regular jobs of serving home buyers each and every day.

There are two ways that Congress and the CFPB can help industry implement TRID. First, the CFPB absolutely must fix their requirement that consumers receive inaccurate prices for title insurance. This is the only cost under the new form and under the new rule that the CFPB prevents home buyers from knowing the actual amount they will pay for title insurance.

Purchasing a home is one of the largest investments a consumer makes in their lifetime. Home buyers want and need to know the true cost of that transaction, including the one-time cost of the title insurance premium that protects that investment. TRID fails consumers in that regard.

Second, the CFPB should provide a hold harmless period, as we heard from other witnesses. While the CFPB has provided some helpful assistance on implementation, our members need more time to ensure that process changes demanded by TRID won't result in delays for those home buyers. This is why we strongly support H.R. 2213, and we thank Congressmen Pearce and Sherman for introducing this legislation. Without that hold harmless period, consumers may experience delays, and REALTORS®, lenders, and settlement agents want to make sure that doesn't happen.

Disruptions or delays in real-life transactions don't just affect one family. Its consequences affect more. In a typical transaction, the seller of one house is going to be the buyer of another. The domino effect of one's closing being delayed results in a number of families being stranded, leaving them looking for alternative housing with moving vans sitting in their driveways.

Our members conduct closings each and every day and take great pride in helping consumers protect their homeownership. Help us ensure that home buyers leave our offices with keys in hand and better understand the costs of their transaction, including that of title insurance.

I appreciate the opportunity to be here, and ALTA is eager to serve as a resource. Thank you.

[The prepared statement of Ms. Evans can be found on page 32 of the appendix.]

Chairman LUETKEMEYER. Thank you, Ms. Evans.  
Ms. Goodman, you are recognized for 5 minutes.

**STATEMENT OF LAURIE S. GOODMAN, DIRECTOR, HOUSING  
FINANCE POLICY CENTER, THE URBAN INSTITUTE**

Ms. GOODMAN. Chairman Luetkemeyer, Ranking Member Beatty, and other members of the subcommittee, thank you very much for the opportunity to testify today.

My name is Laurie Goodman, and I am the director of the Housing Finance Policy Center at the Urban Institute. The Urban Institute is a nonpartisan research organization located in Washington, D.C. The Housing Finance Policy Center provides timely, data-driven analysis of policy issues relating to housing finance and the housing market.

Prior to joining Urban 2 years ago, I spent almost 30 years as a mortgage-backed securities analyst and head of securitized products, research, and strategy groups at several firms including Amherst Securities and UBS. The views expressed in this testimony are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

Today, I want to cover two points. First, I will discuss the TILA-RESPA Integrated Disclosure and make the case that the CFPB should offer a hold harmless period through the end of 2015. Second, I will explain why these disclosures are really a minor operational issue in the context of a housing finance system that is stuck in limbo. Resolving this limbo by finishing the work of reforming Fannie Mae and Freddie Mac is the most important issue facing this country's housing market today.

I will start with the new disclosures. The 2010 Dodd-Frank Act tasked the CFPB with combining the two sets of disclosures borrowers receive and rarely understand into one consumer-friendly form. The CFPB completed this enormous task in November of 2013, and after a few further tweaks has scheduled it to take effect on August 1st, 2015.

I believe the CFPB has done a good job here and the results will definitely improve the closing experience for borrowers. But lenders need more time to implement this enormous change. The August 1st implementation date is too tight for many lenders.

Yes, they have had 21 months to implement these changes, but lenders could not begin systems development until the data elements in the Mortgage Industry Standards Maintenance Organization (MISMO), on which they were all dependent, was complete, and that happened just 3 months ago. And it takes time to develop a new system, integrate it into existing loan-origination platforms, and train your staff.

These new disclosures won't meet the end goal, improving the consumer experience, if lenders are not ready to implement them. What will happen instead is that lenders will delay and avoid closings. A hold harmless period is the best of both worlds. It requires implementation but offers lenders the necessary protection to begin doing their job, which is making loans.

So I would urge the CFPB to provide a reasonable hold harmless period through the end of the year following the August 1st effective date of the TRID regulation.

Now, let's talk about the real elephant in the room, the unfinished business of reforming Fannie Mae and Freddie Mac. The great news is that all the work done to reform the GSEs was not wasted. It has allowed me and many on both sides of the political divide to conclude that the goals of legislative reform should be to preserve the 30-year fixed-rate mortgage, assure broad access to credit, and move the bulk of the risk to the private market. There has been a growing recognition that the government, and hence the taxpayers, must bear the catastrophic risk, but this should be insulated behind private capital so the risk, if it is ever tapped, is remote.

Yes, there has been significant progress through administrative channels in lieu of legislative movement.

The Federal Housing Finance Agency (FHFA) has tackled the issues of lenders adding their own more restrictive requirements to the GSE's requirements by clarifying when the GSEs can put loans back to lenders and by curbing compensatory fees applicable to delinquent loans on the servicing side. They have also brought private capital back through the CAS and STACR back-end risk-sharing transactions and transactions with reinsurers. There have been a few transactions where risk has been shared at the point of origination. And the FHFA has instructed the GSEs to begin work on the common securitization platform, and has put forth a proposal for a single security.

And, yes, there are additional steps the FHFA could pursue, including creating structures which provide discovery of market pricing and expanding the common securitization platform to include other market competitors.

But even so, administrative reforms cannot take us all the way, and that presents an opportunity for Congress to make a real difference. Without congressional action, as a practical matter the GSEs cannot be taken out of conservatorship, and the system cannot allow for additional competitors.

We urge Congress to move forward and address these issues in a careful and thoughtful manner.

Thank you.

[The prepared statement of Ms. Goodman can be found on page 43 of the appendix.]

Chairman LUETKEMEYER. Thank you, Ms. Goodman.

And Mr. Polychron, you have 5 minutes.

**STATEMENT OF CHRIS POLYCHRON, 2015 PRESIDENT, THE  
NATIONAL ASSOCIATION OF REALTORS® (NAR)**

Mr. POLYCHRON. Thank you, sir.

Chairman Luetkemeyer, Mrs. Beatty, and subcommittee members, I am Chris Polychron, the 2015 president of the National Association of REALTORS® (NAR). I am a commercial and residential REALTOR® and executive broker for 1st Choice Realty in Hot Springs National Park, Arkansas.

On August 1st, 2015, significant RESPA-TILA changes will go into effect. NAR is generally supportive of this move to harmoni-

zation as long as it benefits consumers and makes the real estate transaction smoother.

However, we see potential bumps in the road, bumps in the road that could cost families time and money and cause serious frustration. It is clear that RESPA-TILA integration is going to be a learning experience for everyone.

Before I get to the heart of my testimony, I would like to thank Chairman Luetkemeyer for weighing in with the CFPB on this issue. I would also like to thank Congressman Barr and Congresswoman Maloney for their bipartisan sign-on letter to the CFPB, and finally Congressman Pearce and Congressman Sherman for their bipartisan legislation to aid in this effort.

NAR and a broad coalition have sent a letter to Richard Cordray, Director of the Consumer Financial Protection Bureau, outlining our concerns. Here is what we communicated to the Bureau.

First and foremost, NAR has asked the CFPB to make August 1st, 2015, through December 31, 2015, a trial implementation period of restrained enforcement. During this period the industry will operate under the rule and new forms but will be held harmless in terms of enforcement and liability as long as they act in good faith. Industry and the CFPB can then collect data on problems and develop solutions to minimize costly and harmful impact on consumers. This 5-month testing period should provide enough time for everyone to get it right.

It also means the full-fledged implementation from some of the busiest months in our industry to the least busy months of January and February. We are asking for this grace period because of the potential impact to the consumers. Even if only 10 percent of the transactions experience issues with the rule implementation, the numbers will still be significant. That could mean as many as 40,000 transactions a month with problems, and potentially many more. This is certainly something REALTORS® and the industry would like to avoid.

The good news is there is a precedent for the CFPB to create such a period. The Department of Housing and Urban Development took a similar approach when we revised the RESPA disclosure in 2010. We believe that effort should serve as a model for the CFPB and would produce the best outcomes for everyone involved.

We believe the CFPB can provide more detailed written guidance on a number of issues; clarify where RESPA and TILA liability apply, and that the preapproval process can coexist with the rules regarding issuance of the loan estimate; ensure that consumers can still choose an agent that closes a transaction without lender interference, the same way one chooses their lawyer to represent them and not their opponent; and finally, provide more information and flexibility on the bona fide financial emergency waiver and other waiver authority.

Overall, REALTORS® understand that RESPA-TILA integration is a monumental effort, decades in the making. The CFPB has done good work, and we hope a few small steps can help take this giant leap forward. We will continue to work with the CFPB and our industry partners in this effort.

Thank you for this opportunity to testify, and I look forward to answering any questions.

[The prepared statement of Mr. Polychron can be found on page 67 of the appendix.]

Chairman LUETKEMEYER. Thank you, Mr. Polychron.

With that, I will begin the questioning and recognize myself for 5 minutes.

Mr. Polychron, one of the arguments that CFPB uses for their date of August 1st is that it is a slow time of year for applications/closings. You are in the business. Tell me.

Mr. POLYCHRON. I am in the business, and that is an erroneous statement.

Chairman LUETKEMEYER. We have 12 months, where does August rank in the—

Mr. POLYCHRON. Busiest.

Chairman LUETKEMEYER. Busiest.

Mr. POLYCHRON. Third.

Chairman LUETKEMEYER. Probably third. Okay.

Mr. POLYCHRON. I have statistics for that, sir.

Chairman LUETKEMEYER. Perfect. That is what I am looking for, that is the answer I need. Because we need that information to be able to refute what they are saying. So thank you for that testimony.

Mr. POLYCHRON. You are very welcome.

Chairman LUETKEMEYER. Ms. Lowman, I recently met with a group, I spoke to a group of bankers on Monday and they were talking about this issue. And I told them, I said, "You really have two choices. You either stop lending for a period of time prior to and thereafter August 1st or you fill out two sets of documents and hope that by handing the examiners two sets of documents, you are compliant, and let them take their choice.

And so I am kind of curious what your solution is, because I just got done talking yesterday with one of the largest mortgage lenders in the country, and they are going to go the route of two sets of paperwork. This is double cost for them. They are going to eat the cost of this because they don't want the consumer to bear it. But by the same token, it is going to be very, very cumbersome to protect themselves against the liability exposure of making a mistake.

Can you tell us what your thought process is on that?

Ms. LOWMAN. As you know, anything that we do after August 1st falls under the new rule, but we still will be closing business from the prior application. So we will be using two sets of documents throughout that period anyway.

As I indicated earlier, I have been working side by side with my software company since last year. They have not been able to produce the final documents to the satisfaction of our staff. So we are just now starting the testing of those documents. We are not handing any of those new documents to customers as of this point in time.

Chairman LUETKEMEYER. What do you estimate is your time to be able to be compliant? Do you think you will be able to get it done by the first of August, be able to have your software and systems in place so that you can comply?

Ms. LOWMAN. We are being promised that most of our documents will be available, but there will be some loan products that we



offer, including the rural development products for 100 percent down on low income, that will not be available only August 1st.

Chairman LUETKEMEYER. Okay. You represent the ABA. So across the country, what is the consensus, that most banks will be in compliance or be able to be compliant, or most will not be able to be compliant? Or do you have a percentage? What are your thoughts on that?

Ms. LOWMAN. We do have statistics on that, but the understanding is that most of our banks are concerned that they won't be compliant. There may be the last minute where the software companies will produce, but then we are concerned about procedures, processes, and testing.

Chairman LUETKEMEYER. Very good.

Ms. Evans, title insurance folks normally do the closings on a lot of real estate transactions. Is that correct?

Ms. EVANS. That is correct. Yes, sir.

Chairman LUETKEMEYER. Under the new proposal, is that regimen going to change, or is this going to be the same, or what do you foresee happening?

Ms. EVANS. I think the processes could change. That is part of the reason why collaboration and discussion and education is so important, and the hold harmless period allows us to work through those issues to make sure that in working with Ms. Lowman's bank, we may do it one way, and working with the next bank, it may be different. But we need to make sure we have the opportunity to engage in that dialogue and make sure we understand that so the home buyer isn't interrupted in his transaction.

Chairman LUETKEMEYER. To me, it is a concern because if there is not consistency here, if there is not something that is done a certain way most of the time, that leaves the possibility for problems to be there. And, to me, this is a moving target here. And I assume that you have some plans for that.

Ms. EVANS. The new rule specifically has put forward forms and put forward some timelines that we must comply with, but it still recognizes the role that title and settlement agents have in the process and has encouraged us to continue to work with our bank and lending partners to determine what is the best process for the consumers in our marketplace.

Chairman LUETKEMEYER. Thank you.

One more quick question before my time runs out here. And you can probably just give this a really quick answer.

You made a comment during your testimony that consumers don't know the cost of title insurance. Can you elaborate on that just a little bit?

Ms. EVANS. Yes. I am happy to. Thank you.

The rule has a ridiculous and inaccurate formula for which to disclose title insurance rates to the consumer, and it in fact is wrong in about 43 States and totally inaccurate in 26 States. And we would ask that the CFPB correct that calculation and remove the formula from its rule, because if we just disclose the actual cost of the title insurance product, the problem is solved and consumers know the answer.

Chairman LUETKEMEYER. Thank you very much for your testimony. I am out of time.

With that, I will yield to Mrs. Beatty, the ranking member today, for 5 minutes.

Mrs. BEATTY. Thank you, Mr. Chairman.

And thank you to all our witnesses for being here.

Certainly as I look around this committee room, I imagine that probably more than half of us have participated in that mortgage loan closing process, and we have sifted through the hundreds of pages and provided countless signatures because we want part of that American dream, to be a home buyer and to own a home.

As you heard from me earlier, I have heard from my REALTORS®, and they don't want to necessarily change or challenge it, they just want that hold harmless period. They have expressed to me that a possible gridlock on the transactions could occur if the rules are implemented before they are given a chance to fully understand them, to come into compliance, to be trained.

Ms. Lowman, can you walk me through a closing process under CFPB's TILA-RESPA disclosures and highlight what you anticipate could cause hiccups in the mortgage loan process?

Ms. LOWMAN. From what we understand, the biggest changes that are being proposed for the August 1st new rules have to do with the lockdown of the transaction 3 days prior to the loan closing. The lender is at 100 percent liability for what is on that closing disclosure. For those of you who have bought a home, you will know that in a lot of cases there are numbers that are changing within hours before the closing. That can't happen anymore. If something changes, it stops the closing and pushes it back out 3 more days at minimum.

So those are the concerns we have in working with our partners, the REALTOR® community, and ALTA groups, that we are 100 percent responsible. So therefore, we are going to have to lock that document down.

Mrs. BEATTY. Okay. Mr. Polychron, in Ms. Goodman's written testimony she stated that without a hold harmless period or a grace period, the severe consequences for errors under the TILA-RESPA may cause lenders to reduce originations, ultimately harming the borrowers it was designed to help. Do you agree with this assessment?

Mr. POLYCHRON. I do agree with it, and in this period we certainly don't need fewer lenders making money. Our inventory, our loan process is difficult enough right now with credit scores, et cetera, to put this extra burden upon it.

Mrs. BEATTY. Ms. Evans or Ms. Goodman, can you comment on what the grace period from CFPB's TILA-RESPA disclosures based on good faith compliance efforts would allow REALTORS® to accomplish?

Ms. EVANS. What it allows is for everyone in the real estate transaction, all the real estate professionals, to really work through real-life transactions to understand where there might be bumps in the road, where there might be delays that would cause a home buyer concern, and also recognize that we can work out those systems without the fear of any kind of enforcement or penalty.

Ms. GOODMAN. Just to elaborate a little bit more, it is important to realize, as Ms. Lowman said, the systems are just being delivered now. In many cases they still have to be integrated with loan

origination systems. And in many cases either you can't do certain products or there is a heavy manual feature.

So the possibility of errors is very, very large in the early months on all sides. And in addition, there are parts of the CFPB rules that are a little bit unclear. And this just gives you time to both clarify and work out and test the system's bugs. It is really, really important to get this done.

Mrs. BEATTY. And lastly, since your customers are our constituents, let's just assume this doesn't happen, you are not given the grace period or the hold harmless. What happens to me as that home buyer coming in?

Ms. LOWMAN. The idea that you would sense nothing is happening to you because we are still trying to deliver a mortgage to you for your home purchase.

The risk is that after 50 years and the combination of RESPA and TILA, there now are civil penalties that are going to go along with mistakes. In my world, working with my regulator, if I make three errors in a row that is considered pattern and practice and I can be fined for that. Those are the risks to my business, not to the customer, but to my business, and ultimately, then, to my customer if we can no longer operate efficiently and have to change those costs for our customers.

Mrs. BEATTY. Thank you.

Chairman LUETKEMEYER. Thank you.

Next up is the distinguished gentleman from Georgia, Mr. Westmoreland, for 5 minutes.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

First of all, I just want to make a couple of comments, and I say this to most of the witnesses who come here, with the unintended consequences of what Dodd-Frank has created, and specifically the CFPB. In fact, a lot of us who were not on the committee when Dodd-Frank was passed feel kind of like that guy in the circus walking behind the elephant with a broom and a shovel. And the elephant is Dodd-Frank, and we need to get rid of that elephant.

I was in the real estate business for over 20 years. I have been to many, many, many closings. And I have bought things myself. And the majority of the time the purchaser wants to know how much money he has to have, he wants to know what his note is, possibly the interest rate, and that is it.

So when I started selling real estate, you could have a one-page contract. And now I think they are going to get to the point where you are going to have to give the buyer an IQ test to see if he is smart enough to even go to closing. We need to be giving an IQ test to some of these people at the CFPB who are making up these rules, who have never sold a piece of real estate. They have never made a loan. They have never written title insurance. They have never experienced this. Some of the things that you have mentioned are just a little bit of the collateral damage that is going to happen.

And I will say this, in the hundreds of closings I have been to, I have never seen the interest rate change, the note change, the price of the house change. There may be some adjustments in some tax escrow or something, but not really anything to affect that sale that would cause you to have to put the paperwork back for an-

other 3 days to mail off to get somebody to look at it. That is insanity.

Part of the real estate industry, what we made, was the fact that everything had to be disclosed between the buyer and the seller. But even in this case, as I understand the rule, the buyer would have to do a handwritten note explaining the differences in this and send it back. This is pure stupidity. I mean, stupidity. And in fact, I would encourage the CFPB, before they make any of these other rules, to have some people who are actually doing this business come in and say: Hey, how can we make this simpler on the buyer? I promise you this whole deal was intended to make it simpler for the buyer.

If you want to make it simpler for the buyer, don't have him sign stuff where he waives his rights away or is just doing something to make sure he has signed a paper to say that he understands the last paper he signed. And then after he signs that, he will sign one that said: I understand the last three papers I have signed. That doesn't make him understand what is going on.

And so it is a good real estate agent, it is a good mortgage person, it is a good attorney, those are the people who make that customer understand what he is doing. And I think you all do a very good job of it.

Now, I will ask a question.

Ms. Lowman, the CFPB's whole reason for this was consolidating it to streamline it for paperwork. Do these new forms in any way that they are designed give borrowers a more accurate picture of what they are doing?

Ms. LOWMAN. No, sir. If I had been a part of the original transaction, I wouldn't have to explain it today as a first grade story problem where the information is fragmented through the report. I have to train my closer to be able to make sense of that to the borrower. I have to train my closer how to explain what a TIP is, and it is not a restaurant, it is the total interest paid, and why that is important for the consumer to understand.

Mr. WESTMORELAND. So it is not simpler, it is not less paperwork. It is really more complicated. You feel like from the experience that you have we have made it more complicated than simpler.

Ms. LOWMAN. Yes, that is what I believe.

Mr. WESTMORELAND. Thank you. And I think that would be true to all the witnesses up there, is that we have taken something and made a mess of it. And we are just really good at that. So hopefully, we will be able to postpone this ruling.

Thank you.

Chairman LUETKEMEYER. I thank the gentleman.

With that, we go to the distinguished gentleman from Minnesota, Mr. Ellison, for 5 minutes.

Mr. ELLISON. Mr. Chairman, Ranking Member Beatty, thank you very much.

And also thank you to all the panelists. We really appreciate your help, and all the information you share with us helps us make hopefully better decisions.

Ms. Goodman, one of your fellow panelists, Ms. Lowman, offered her views on whether this change, this consolidation, would be of

benefit to the consumer. She doesn't think that it will, and I respect that based on her experience and study. Do you share the same view?

Ms. GOODMAN. No. I actually think it will be beneficial to the consumers at the end of the day. When they walk in for closing, they will know exactly what those closing costs are going to be, which is an assurance they don't have under the present system. I think it really does help improve the consumer experience, but it only helps if it is implemented properly.

Mr. ELLISON. Thank you.

In due respect to all the panelists, I just want to make sure that the people who are watching this know that there are at least two sides to the story. I think that is just fair.

Ms. EVANS, I would like to learn a little bit more about ALTA's membership. How many of ALTA's members are engaged in what RESPA would define as affiliated business arrangements?

Ms. EVANS. Thank you, sir, for that question.

We don't know. That is not data that we capture. We capture the identity of those members who provide title and settlement services.

Mr. ELLISON. Okay. So let me ask you just a follow-up, in order to neutralize advocacy efforts for a trade organization, I have to imagine that the number of impacted members who identify as affiliated business arrangements must be a significant number. Is that right? Without asking a numerical specificity, is it a good number? I don't know. Would you say half? What would you estimate?

Ms. EVANS. I really don't have actual figures on that.

Mr. ELLISON. Okay.

Ms. EVANS. But I do not believe half is accurate, sir.

Mr. ELLISON. What would you say?

Ms. EVANS. I would say it is far less than that.

Mr. ELLISON. Twenty-five percent?

Ms. EVANS. I really don't know, sir.

Mr. ELLISON. Mr. Polychron, do you have a view on this?

Mr. POLYCHRON. I saw that statistic at one time, and I know it is less than 50 percent. I think it is closer to 25 percent than 50 percent.

Mr. ELLISON. Ms. Lowman, did you have a thought on this?

Ms. LOWMAN. Only that TRID does require, if you have an affiliated business arrangement, that it is 100 percent zero tolerance.

Mr. ELLISON. Okay.

Going back to Ms. Evans, I noticed in your testimony you note: "The majority of our members are small businesses with the average title agency earning \$156,000 in gross annual revenue and employing 3 or fewer people." So could you tell me, is there any reason why ALTA does not keep the information about the affiliated business arrangements?

Ms. EVANS. It is not a matter of whether you are an affiliated business or not to qualify for membership with ALTA. We represent the title insurance industry.

Mr. ELLISON. Okay. And I appreciate that. Is that information you could perhaps, if you had the time, share with me later on if I were to submit a question to you?

Ms. EVANS. We would certainly consider it. It is not anything that we even capture. So we would have to go back and determine if that is an appropriate inquiry to make to our membership.

Mr. ELLISON. Okay. Thank you.

I would also like to ask you a little bit about financial benefits for referral. Under RESPA, it prohibits financial benefit for referral. Yet there are so many ways that REALTORS®, homebuilders, lenders, and mortgage brokers benefit from a referral—a way that is currently legal, a shared ownership interest, and ways that are currently illegal but practiced, lower desk rents or bonuses for REALTORS®, special event tickets, things like that.

We would be a little surprised to learn that dentists could receive a benefit from referring a client to an orthodontist or that a lawyer could receive a financial benefit by referring to another lawyer. In fact, for both of those, doing so could get you into some difficulty, depending.

So Ms. Evans, could you share with me why referral sources should be allowed to receive benefit or payment for the referral of settlement service businesses?

Ms. EVANS. Sir, I believe that RESPA very strictly prohibits the payment of a thing of value or the giving of a thing of value in exchange for the referral of business. And the enforcement of RESPA we are continuing to see today, both at the CFPB level and at the State level through our State regulators. So it should not be tolerated and is not permitted, in my opinion.

Mr. ELLISON. Thank you, ma'am.

Do you think the overall costs of a referral as those are used in the affiliated business arrangement business structure is included in the cost of operating a title insurance company?

Ms. EVANS. RESPA clearly permits an affiliated business arrangement under certain circumstances with very set guidelines. And so, there is no reason why it should be disallowed. It must comply with the standards set under the law.

Mr. ELLISON. I have gone over my time.

Thank you very much, Ms. Evans.

Chairman LUTKEMEYER. I thank the gentleman.

With that, we go to the distinguished gentleman from New Mexico, who is also one of the co-sponsors of H.R. 2213, Mr. Pearce, for 5 minutes.

Mr. PEARCE. Thank you, Mr. Chairman. I appreciate it.

I would like to ask unanimous consent to submit a letter from 16 different agencies or different groups who support H.R. 2213.

Chairman LUTKEMEYER. Without objection, it is so ordered.

Mr. PEARCE. Thank you, Mr. Chairman.

Also, I would draw to the attention of the Members here that a small title group in my hometown just recently called in the last week saying that it had to spend \$100,000 on a program to try to implement this new regulation, and they are not sure that is going to do it. For a small company, that is extraordinarily difficult.

Ms. Evans, I was absolutely pleased to hear that you say you don't track that information that was being requested by my colleague. Now, keep in mind that we watched the NSA track every darn thing for every individual in the whole country, and so they are probably going to call us and tell us the answer to all the ques-

tions that we just heard. But I am glad that you are not tracking it because I think that the government knows enough about us already, frankly.

Ms. EVANS, if you were going to speculate, would the larger title companies or the smaller title companies be more disadvantaged by the coming rules?

Ms. EVANS. I think we are going to share that pain equally. It actually depends on, as Ms. Lowman said, the ability for our software providers to provide us the services and the systems that we need. But it also relates to the markets that we do business in and the banks and lenders that are our customers in those markets.

Mr. PEARCE. Having been a small business person myself, I worry at the number of small businesses who can afford \$100,000 software. I will just tell you that. And when businesses start closing down, I know where they are going to close down first. They are going to close down in the smaller communities first, and someone from outside is going to come in and service that, and now you have lost contact with your customer base. And I just see disadvantages for the smaller places, for the poorer places.

Obviously, the lower the income levels, then the less attractive that is going to be to outside providers. And so I worry about the loss of jobs in areas like New Mexico, because we have a lot of small communities, a lot of communities under 25,000. And so I worry about that.

Have you all done any studies on the pressures that would cause companies to close?

Ms. EVANS. We haven't done exact studies, but we have talked with many of our members across the United States that are exactly like you describe in your local communities, and they are very concerned about the ability to continue to serve consumers, home buyers, and sellers in their markets and making sure that they have the systems and the financial stability and are able to go forward.

Mr. PEARCE. Ms. Goodman, I really appreciated your testimony. I thought that it came across covering both sides of the issues very well. And I will tell you as one of the Republicans, I was a little alarmed when you said you were going to take aim at the elephant in the room. And so other than that, I was okay with it. But all right. I took a while to catch on there.

Ms. GOODMAN. Thank you.

Mr. PEARCE. Again, as a small State, I worry, and I really appreciate your comments on GSE reform. That is kind of where I would like to track toward, as again in a small State, the manufactured housing is 50 percent of the houses sold in my district. And so I worry that the secondary market, the private market, would actually get out and service these.

Have you all done any studies on the privatization and the private sharing of risk? I am not trying to put words in your mouth. Have you all done any studies about that?

Ms. GOODMAN. We have done a lot of work on risk sharing between the GSEs and the private markets, and we have done a lot of work on credit availability. And one of our concerns is that those being squeezed out of the market now are those borrowers with

lower credit scores, and disproportionately include those living in manufactured housing.

Mr. PEARCE. Yes, that would be my worry.

Ms. GOODMAN. We have not done anything explicitly on manufactured housing, although we have done a lot of work on credit availability. But that is an interesting topic to add to our research agenda. Thank you.

Mr. PEARCE. I'll tell you what, if you would like to come and visit our office, I would like to dig into this a little deeper. If we had the capability to do it ourselves as an office, we already would have. It is just very complex. And I, again, appreciated your testimony and would invite you—

Ms. GOODMAN. Thank you. I accept.

Mr. PEARCE. Okay.

Ms. Lowman, you had mentioned the risk to your business if you make bad disclosures. Can you tell me a little bit more about that risk and how it pyramids up or down or whichever way pyramids go? I don't know exactly, not coming from Egypt.

Ms. LOWMAN. It will get broader at the bottom, I can tell you that.

What we have seen since 2010 is a zero tolerance in compliance. And the compliance, again, doesn't impact the consumer directly, it impacts my business and that of all the mortgage lending industry. And I think it was intended to improve the delivery of information to the customer, but the measurement now is that you can't make a mistake. For an example, if I disclose to a customer an incorrect title insurance fee, I eat the difference if it is wrong. That is the new rule.

Mr. PEARCE. Yes. So that zero tolerance ought to work backwards toward the government regulators.

I have extended past my time, Mr. Chairman. Thanks for your tolerance.

Chairman LUETKEMEYER. I thank the gentleman.

With that, we go to the gentlemen from Texas, Mr. Williams, for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman.

And I want to thank all of you for being here today. This is great testimony. We appreciate it.

I am a small business owner. I am from Texas. And I can tell you that regulations are killing Main Street. You all are Main Street. I am Main Street. The CFPB, as I believe you have heard some of my other colleagues say, is not a friend of Main Street and is doing a lot of harm in America. And in full disclosure, I am a car dealer. So I feel your pain.

My question for Ms. Lowman is, in your testimony you discussed third-party compliance systems and that vendors will deliver these in stages, and many of them will not be ready by the August 1st deadline, which we have talked about.

As a result, these lenders, especially the smaller financial institutions, will have to halt their mortgage lending business, as we have heard. And I can tell you in some of the rural parts of my district in Texas, the CFPB is already regulating them out of the mortgage market.



Personally, I think you are starting to see what I would call a forced consolidation of these banks. I know it is happening in Texas because in Texas alone, where we think we have the greatest economy in the world, we have still lost 115 community banks since 2012.

Look, that is what it is all about. I really think protecting these small institutions who can barely afford to comply with this new law and can't afford to be held liable should they get it wrong, we hear all the time that community banks and lenders are hiring more compliance officers than they are lending officers, and that is just wrong.

So going back to my question, Ms. Lowman, what might the fact that the products that are not going to be ready, how will they affect the bank as a whole? You have talked a little bit about that, but tell us again.

Ms. LOWMAN. Part of my market in west Michigan, and we feel we have a very strong market as well, is the service of zero lending to low- and moderate-income folks. Rural development is one of those very good products that we use which comes from the USDA. And we will not have those documents ready. I have already been told by my software partner that is on the last part of their upgrades. If I can't do rural development, I can't do 100 percent on lending for the low- and moderate-borrower.

Mr. WILLIAMS. So who is affected? The customer again.

Ms. LOWMAN. The customer.

Mr. WILLIAMS. By big government getting involved.

Second question, how might a bank make up for the lost business? You are going to have lost business because you can't sell the product, right, because you are not ready for it. How are you going to make up for that lost business, those lost profits?

Ms. LOWMAN. We are all in business, and we are a for-profit business, but I have done some studies just since the Dodd-Frank Act. It takes me 3 hours longer for every applicant. I think the customer is the one who is suffering in the long run. We can't get to all of them, which means that some folks are not going to be able to do their mortgage with their local lender.

Mr. WILLIAMS. Because of the overreach of the heavy hand of government, you are going to lose some profits probably because of your inability to reach out to everybody.

Now, would the same lenders have to raise costs on consumers to make up for the mortgages they couldn't make until their systems were in place?

Ms. LOWMAN. We have done some studies on that through the ABA, and 5 years ago it cost about \$5,000 all-in cost to do a mortgage. We have anticipated that by the end of 2016, it is going to be over \$9,000 to do that same mortgage for the consumer.

Mr. WILLIAMS. So there again, the consumer is affected.

I still have some time. My question would be for you, Ms. Evans. It is nice to see you again. Thank you for being here. What are you seeing in the overall title insurance market as a result of this legislation? For example, I would say, do you see consolidation in the market or are small businesses thriving in this regulatory environment?

Ms. EVANS. They most certainly are not thriving. They are struggling. And there is discussion of consolidation. There is discussion of some closures because of the simple inability to comply with overregulation and the burdens placed upon them.

Mr. WILLIAMS. So it affects competition?

Ms. EVANS. It absolutely affects competition, which directly affects the consumer.

Mr. WILLIAMS. The consumer, again, is affected by the heavy-handed overreach of government?

Ms. EVANS. Yes.

Mr. WILLIAMS. Ms. Lowman?

Ms. LOWMAN. Can I share one thing on that title insurance piece? One of the comments that Ms. Evans made earlier about how TRID is regulating how we disclose that, right now we have what we call a simultaneous issue policy, where borrowers get to have a savings when we do the owners policy and mortgage policy with the same company.

Under the new rules, because we have to disclose the full cost and we can't disclose simultaneous issue, most companies now are stopping simultaneous issue. I did some studies on a \$100,000 loan, which costs the borrower \$200 on a \$250,000 loan. That costs almost \$300 in that savings they will not be able to experience because the title industry is saying we can't offer it.

Mr. WILLIAMS. The American Dream gets further and further away.

Thank you, Mr. Chairman. I yield back my time.

Chairman LUETKEMEYER. I thank the gentleman.

With that, we will go to the gentlelady from Wisconsin, Ms. Moore, for 5 minutes.

Ms. MOORE. Thank you so much.

And I want to apologize to the panel for not being able to attend earlier so that I could hear some of your testimony and some of the other questions. So you must forgive me if I am redundant in any way. Thank you for joining us.

I have a couple of concerns. We could start out with the August 1st, 2015, deadline for the new real estate settlement procedures and truth-in-lending forms, the merged form. I am on a letter with Mrs. Maloney to delay implementation of this because there is a concern on the part of many of us that this is just not enough time in the real estate season to give them time to really comply with the new requirements.

Now, Mrs. Maloney is one of the more strident supporters of the CFPB, so I know that she is not suggesting that, to stop the CFPB from this activity. But I just wanted the panel's opinion on whether a delay was possible and what impact do they see that this would have?

Ms. EVANS. Thank you for your question. I actually had the opportunity to meet Director Cordray yesterday afternoon, and I posed that very question and urged him to consider a delay in enforcement, a hold harmless period, because we really do need to test this process, test these forms, and make sure that consumers aren't harmed in the transaction.

He told me, as I think he presented in front of the REALTORS® organization earlier this week, that he is still listening. So I think

any encouragement from all of you helps further the case that consumers need to be assured that their transactions will move forward as we implement these new forms in this new process.

Ms. MOORE. Okay. Thank you for that.

The other question I had, and maybe Mr. Polychron might be the best person to ask this question, is in regard to FHA loans. Many modest-income borrowers and low-income borrowers find themselves needing to go to the FHA for their financing because they don't have the 20 percent downpayment.

And we have heard concerns from some realty groups, including the REALTORS®, that the requirement that borrowers amortize the mortgage insurance payment over the entire life of the loan means that the poorest borrowers will be paying much more for the loan. And it doesn't seem to have any nexus with added risk factors versus the private mortgage insurance that would phase out earlier and be less expensive.

What are your thoughts are on that?

Mr. POLYCHRON. Are you speaking in reference to the downpayment being high? Because you started off with the downpayment.

Ms. MOORE. What I am saying is, if a person is getting an FHA loan and the FHA mortgage insurance is amortized over the entire length of the loan versus being phased out at some point, it prevents a borrower from developing any equity in the property. And this is a rule that has been put in place, and I am wondering if this is an unintended consequence, in your opinion.

Mr. POLYCHRON. Yes. Some other things happened to perhaps offset that. The mortgage premium was reduced from 1.35 down to 0.85, which lowered the average home that sold through FHA approximately \$90 a month. So even though some other things changed that might affect it negatively, I think overall with the downpayment being lowered again to 3.5 percent on FHA loans, I think the product has become much more attractive to all—

Ms. MOORE. Any other observations about this in my 4 seconds from the other panelists?

Ms. LOWMAN. I deal with conventional primarily because of that. We are regulated on the requirement to reduce or take the entire PMI premium out of the transaction at 78 percent. The FHA, the new rules do have a 100 percent MI coverage for the life of the loan.

Ms. MOORE. My time has expired. I don't know that I got the answer, but thank you.

Chairman LUETKEMEYER. Thank you.

With that, we go to the gentleman from Pennsylvania, the distinguished gentleman, Mr. Rothfus, for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

It is kind of hard to see folks from up here with the new setup.

For the panel, I have talked with a popular real estate company back in my district a bit about the TRID rule, and they do expect to have technology ready to comply by the August 1st deadline. This particular company is going to be ready. However, they noted that the large number of settlement service providers they work with also need to be ready if they all want to do business together.

Could the panel please elaborate on the interconnectedness of real estate transactions, what could happen if one component in the process is not ready with the needed systems and technology?

Ms. Lowman, would you like to start?

Ms. LOWMAN. I will start out, only because the closing disclosure, which is the new part of TRID, is 100 percent our responsibility. In the past, settlement done by the title company, we collaborate the numbers, they can change right up until minutes before closing. And under TRID, that cannot happen anymore. It is locked down 3 days before, which means we have to collaborate with our title companies about 5 days before closing. And when you buy a home, there are expenses and things that happen in that week before closing that we can no longer allow to happen.

So that is going to be one of the biggest challenges of the new TRID rule, the lockdown of that closing disclosure. We have spent the last several months sitting down with our vendor partners, including the title company and the REALTOR® community, asking, "How can we do the best job to be where we have to be on August 1st?" We don't have all those answers yet.

Mr. ROTHFUS. Anybody else want to comment on the interconnectedness and the impact of one entity not being ready?

Ms. EVANS. Thank you. And that absolutely is true. It is critically important that we all are able to share data directly with one another and to make those changes and make it very timely and seamless so that the timeframe set forward in the new rule can be met so that the loans can close without delay. But that last-minute change, that need to prorate the gas that is in the propane tank or adjust the homeowners association dues, all those last-minute issues that come up are going to be much more difficult to do, and that integration will be critical to accomplish that.

Mr. ROTHFUS. Thank you.

Mr. POLYCHRON. And if I may, ultimately, my client, my couple who is sitting at that closing table, when they find out they are not going to be able to close, has to provide themselves for more perhaps rental payments, higher interest payments, moving vans that are sitting there full of furniture that is going to cost more. So there are going to be incurred costs that they wouldn't normally have as well.

Ms. GOODMAN. Just to add one more thing, and that is the sheer number of vendors that has to be coordinated is just incredible. It is mortgage brokers, the title insurance agents, attorneys, closing or settlement agents, and pest inspectors. It is incredible.

Mr. ROTHFUS. Thank you.

Ms. Lowman, have there been other regulations that you recall where technology hasn't been ready at the deadline for implementation and where Federal regulators provided some relief to industry to ensure that they were not going to be adversely harmed?

Ms. LOWMAN. Do I understand the question to say the technology piece?

Mr. ROTHFUS. Yes, to comply with a certain regulation by a certain deadline, if technology wasn't ready. Do you recall other instances where the technology just wasn't ready yet and the Federal regulators provided some relief?

Ms. LOWMAN. In my 30-year career, in just the mortgage business, there has never been an issue with the technology piece. It has usually been about processes.

Mr. ROTHFUS. Thank you.

There will be glitches when TRID goes into effect on August 1st, especially since there currently is no testing phase. What are some challenges industry participants will face that might have been unaccounted for by the CFPB? Anybody on the panel want to address that?

Ms. EVANS. Sir, thank you. I think that is a really good question, and I think that is part of the reason why the delayed enforcement is so important, is because we don't necessarily know exactly what those issues may be.

Under the current rule, the buyer/borrower risks losing their earnest money if closing doesn't occur in a timely manner. And the CFPB has acknowledged through their statements that they don't believe that a loss of earnest money is a financial crisis for a buyer. I have to tell you, in my world, as I close transactions, whether that earnest money is \$1,000 or \$10,000, the loss of that to a buyer/borrower is huge, and the consequence is a financial—

Mr. ROTHFUS. That is a significant number.

Ms. EVANS. Yes.

Mr. ROTHFUS. Thank you.

I yield back.

Chairman LUETKEMEYER. Thank you.

With that, we go to the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you very much, Mr. Chairman, and I thank the ranking member as well.

Not having been here for the entirety of the hearing because of other duties, I may ask a question that has already been answered, so please tolerate me to the extent that you may.

Integrated disclosure, is there anyone among you who is opposed to the integrated disclosure? If so, would you kindly extend a hand into the air or simply say so. Anyone? All right.

Now, the time period that we are discussing is about 5 months. Is that enough time to make the transition?

Ms. GOODMAN. It is clearly not. I think you can argue that lenders really had 21 months, but they didn't, because every system was dependent on every other system. So the systems that are being delivered to Ms. Lowman were in turn dependent on MISMO, which is the mortgage information and data system. That was in turn dependent on Fannie and Freddie with their uniform disclosures, which required updating. There are 899 data elements in that, some of which had to be updated. So there was sort of a sequencing.

We are getting to the end and the timeline is very, very tight. So while systems may be mostly in place, they won't be fully integrated. There is going to be a huge manual element. And the people at the end of the line who are going to suffer are going to be consumers with delayed closings.

Mr. GREEN. I think, Ms. Lowman, you were about to give a comment as well?

Ms. LOWMAN. I would echo her comments completely.

Mr. GREEN. Well, permit me to ask, what would be reasonable, in your opinion?

Ms. LOWMAN. From my perspective, working with my software company is the most strategic part of implementation right now. I am still waiting to get to that stage.

Once we have the software in place and we start testing, I have to pull people out of the field, which means consumers can't get to their mortgage person for an application, and spend the time training them. And I was looking towards about a 60-day training period, and I won't be able to start that until the end of June at this point.

Mr. GREEN. Moving to another topic, Ms. Lowman, Mr. Ellison was asking questions about affiliates and you were about to make a comment about 100 percent zero tolerance. I didn't quite get the gist of what you were going to say. Would you kindly explain?

Ms. LOWMAN. If a bank is working with an affiliated title company that they may own, TRID says that we have no tolerance for error. So the dollar amount that we put on the early disclosure to the customer, primarily because it is an affiliate of the bank, we cannot have any number other than what we close with. There is no ability to change that.

Mr. GREEN. And the final question that I would ask has simply to do with the utilization of the time if we have a hold harmless period. Would you care to explain to me how this time would be effectively used?

Ms. EVANS. Thank you, sir. That time would be used to use these new forms, use the new process in real-life transactions to make sure that we all have it right and that we are able to timely close consumers' loans and make sure that there aren't unintended consequences as a result of this new process.

Mr. GREEN. Anyone else?

Mr. POLYCHRON. I kind of like to compare it to the NFL. They play preseason games that don't count against them, and then all a sudden when the day gets there, they play for real, and that is what I would kind of like to see happen as well.

Mr. GREEN. Thank you very much. I appreciate your analogy.

Thank you, Mr. Chairman. I will yield back.

Chairman LUETKEMEYER. I thank the gentleman.

With that, we go to the gentleman from Kentucky, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Ms. EVANS, I appreciated your testimony regarding your conversation with Mr. Cordray yesterday, and I am happy to hear that he said that he would be listening and continuing to listen in advance of August 1st.

My question to you is, do you expect the CFPB to make any changes without a congressional intervention based on your communications and industry's communications with the Bureau?

Ms. EVANS. I think I would be speculating if I said yes or no to that. But what I do feel confident in is that any kind of encouragement or action that you all would take to help move the need for that change forward would certainly go a long way.

Mr. BARR. To that point, as you may know, I am leading a letter and sending a letter to the Bureau with my colleague, Mrs. Malo-

ney from New York, to encourage the Bureau to give you all that pre-season, if you will, so that you can test all of the new procedures.

The goal of this new integrated disclosure, of course, is to simplify the process of closing. And yet we see that the regulation itself is a 1,888-page rule in and of itself. My question to anyone who would like to answer is, do you think that 1,888 pages of regulation is too much or too little guidance?

Ms. Lowman, since you smiled?

Ms. LOWMAN. There is a lot of minutiae in there that we are still trying to figure out how that impacts the numbers that we provide for our customers. And as we have read it and had our attorneys read it, we have spent a lot of time trying to figure out what that exactly means to every bit of the documentation that goes to the customer.

But as we put these rules into play, I think this period of time that we are asking for would give us time to try it on, make sure it fits right, go back and forth with CFPB to try to get more clarification without the penalty of closing customers down for closing where they could lose their rate lock, they could lose the house that they are buying, and lose their downpayment.

Mr. BARR. My understanding is that there are 10 pages of disclosure forms under this regulation: a 3-page loan estimate; a 5-page closing disclosure; and a 2-page disclosure to the person selling. Is this more complicated, is this a more voluminous amount of paper than typical closing under the current law?

Ms. LOWMAN. We had some sweeping changes a few years ago, and that probably was more paperwork than what this is, and that locked down tolerances, which was the concern that the consumer would get a bait and switch, like it is going to cost you this much, but it really costs you this much at the closing table. That all changed several years ago.

And as I said earlier, we have looked at these documents that HUD created and that were part of RESPA for a long, long time. They are not cumbersome. I think it was the training of people who give that disclosure at closing to make sure it is clear to customers. And I am not sure we fixed that yet.

Mr. BARR. I will stay with you, Ms. Lowman, with one other question directed specifically to you. What do you see in terms of the additional costs to consumers and also just generally credit availability impacts as a result of the new integrated disclosure rule?

Ms. LOWMAN. From what I have sensed so far reading it, the impact of credit availability should not change. The amount of available time to work with customers has changed. It has taken us much longer to do each transaction, so we can get fewer people through the process. That shouldn't be different from one shop to the next, it should be universal. I think that is going to be a big impact. And then just monitoring the activity in our shops is costing more money, and if it costs more money to us to do it, it is going to cost the customer more.

Mr. BARR. And I am curious about this 3-day advance requirement and some of the challenges associated with the requirement to provide the disclosure 3 days in advance of closing. Can you just

elaborate a little bit in my remaining time about some of those additional complexities that could be created?

Ms. LOWMAN. I have a calendar, but it basically says that on the new rules, the last loan estimate I can issue to a customer, with any changes, whether the customer asks for it or whether the REALTOR® asks for it or the title company changes something, is day 4. Day 3 before closing is the day we issue the closing disclosure. It goes to the customer. It goes to the title company. That is locked down.

If something comes up like homeowners association dues that we didn't know about or the fuel bill that we were talking about earlier, then that stops the 3 days. You have to issue a new 4-day loan estimate for the changes and then a new 3-day closing disclosure, and now your closing is about 4 or 5 days further out.

Mr. BARR. Thank you for your testimony.

I yield back.

Chairman LUETKEMEYER. I thank the gentleman.

With that, we have our final inquisitor of the day, the distinguished gentleman from California, Mr. Sherman, who is also the cosponsor of H.R. 2213. He is recognized for 5 minutes.

Mr. SHERMAN. Thank you, Mr. Chairman. I served for so many years on this subcommittee, and I want to thank you for allowing me to participate in this hearing even though I am no longer one of your members.

You know, I cosponsored Dodd-Frank. I think no one else in the room can say that at the present time, for different reasons, I would argue, for different reasons. I know, for different reasons. And the plan for the CFPB was they wouldn't have to listen to the appropriating committee. They are the only agency in government I can think of that doesn't have to listen to the appropriators.

We didn't do that because we thought they shouldn't listen to Congress. Rather, we wanted both ears focused on the authorizing committee, this committee. This is where the expertise resides. And even if we didn't bring expertise there should be a certain respect. What is it, honor your father and your mother? We created this agency right here in this room before it was redecorated.

And I like Mr. Polychron's example comparing it to the pre-season. My own example is that this is like a shakedown cruise. You build the best ship you can, but you then take it out and see how it works. And you expect it to float, you expect it to work, but you don't shoot the captain if it doesn't work on the shakedown cruise. You don't even subject him to the American trial bar. You get the bugs out of it.

And in this one, I am seeing some bugs, because if I understand Ms. Lowman's testimony and others that I have heard, the slightest little change can delay things for days. So if I was buying a house and I found that the water heater needed to be fixed, instead of getting the water heater fixed at the expense of the seller, which is only fair, I would just say to heck with it, I will fix it myself, I won't tell anybody about it.

The last thing I want to do is move into the house 5 days after the school year begins because I want somebody else, in all fairness, to pay for the—so this idea to start over for \$50 items or \$200 items does not help the consumer. But as I understand the testi-



mony here, you are ready to go with this regulation, whatever flaws it has, on January 1. Actually, you are going to implement it on August 1st, but you just don't want to get sued for the problems discovered in the shakedown cruise.

I don't know why Congress has to push this hard to get that as the result. But we do have the Pearce-Sherman bill. We are looking for cosponsors. And it shouldn't take an act of Congress to get a 5-month period in which you do your level best to follow this new law, but you are not going to get sued or penalized during the shakedown cruise.

Mr. Polychron, what I am hearing from REALTORS® in the San Fernando Valley is this is already affecting planning for selling homes and buying homes, that people are worried if they can't get their escrow open by August 1st that they are going to have problems. People are already planning to just take the month of September and October off, which may be good for them and their families if they are REALTORS®, but not good for my area.

Are you seeing that around the country? Is the prospect of this highly litigious, people-waiting-to-sue situation already affecting behavior?

Mr. POLYCHRON. Congressman Sherman, southerners are a little different than people in California. But I will tell you that what we are seeing happen is our title companies and lenders are telling us to add from 15 to as much as 45 days to a closing to expect it to finally happen. So it is still a delayed period, which we don't like.

Mr. SHERMAN. And right at the time of the school year where I have to move into the house or my kids can't go to that school, they can start 2 weeks late, that is—

Mr. POLYCHRON. All correct, sir.

Mr. SHERMAN. Is everybody here—I think you have already said this—in favor of the Pearce-Sherman bill? I am seeing nod, nod, nod.

I see, Ms. Goodman, are you nodding or—you are not shaking your head.

Ms. GOODMAN. I am definitely in favor of the hold harmless period. I am not sure that you need to do it legislatively as opposed to by urging the CFPB to do it, because I really think it is—

Mr. SHERMAN. I want to commend Mrs. Maloney and Mr. Barr, because they have sent a letter, organized a letter that many of us have signed that has encapsulated the wisdom of Ms. Goodman. And nothing would please me more than throwing away this bill because the CFPB did exactly what Ms. Goodman suggested.

I believe my time has virtually expired, and I yield back.

Chairman LUETKEMEYER. As usual, the gentleman from California is very articulate and has great points to make. Thank you for your participation in our committee hearing, and you are most welcome.

With that, we have our final questioner of the day, the gentleman from Florida, Mr. Ross, for 5 minutes.

Mr. ROSS. Thank you, Mr. Chairman. I don't think I will take my full 5 minutes, but I do want to comment that, yes, I too am a cosponsor of the Pearce-Sherman bill and believe that as a lawyer, in order to address the potential causes of action, it probably is legislatively necessary.

But I just want to address this, if I can Ms. Evans, to you, because as a law student some 30 years ago, before we had computers, we would do an abstractive title by going down to the courthouse and doing the chain of title and taking some painstaking efforts to find out that we had a clean title. And then we would look and go back to the title company to do the title insurance and put in our exclusions.

If the Pearce-Sherman bill is not implemented, if there is not a safe harbor, I foresee some title situations that are going to be very painstaking that in and of itself give rise to litigious causes of action or maybe other exclusions that title companies will want to put in there. And so I guess from your perspective, what do you anticipate to be the impact if we are not able to correct this and allow for the safe harbor?

Ms. EVANS. Thank you, sir, for the question. I think the largest impact is going to be on the closing and settlement side. I think that the title insurance product, the search and exam, will continue to go forward. I think we will be required to make sure that we are able to search, examine—

Mr. ROSS. You will have a conditional acceptance—

Ms. EVANS. —and provide those products in a shortened period of time.

Mr. ROSS. No, you will have a conditional acceptance essentially or a conditional issuance of a title policy that then may give rise to an objection of the mortgagee because it doesn't protect their interest because you are not sure.

I guess what I am suggesting is that until we get this cleared up, and until you—which by the way, I think, has probably one of the most significant impacts on a transaction because of the depth of the title history—that we have to have that cleared up. And I guess what I am concerned about is, you have to protect your interest, and if you don't do it through an exclusion or a conditional issuance, then you do so at your own peril.

Ms. EVANS. We want to make sure that home buyer's investment is protected—

Mr. ROSS. Correct.

Ms. EVANS. —and they get a product that well covers that commitment that they have made to purchase that home.

Mr. ROSS. I agree with you. And in order to have that satisfaction that you know that home buyer is protected, you need some sense of certainty, correct?

Ms. EVANS. Absolutely.

Mr. ROSS. Mr. Chairman, I yield back. Thank you.

Chairman LUETKEMEYER. I thank the gentleman.

And obviously, things on the Floor have broken down, because we are an hour late with votes. So thankfully, and for your benefit anyway, that happened. Again, I thank the witnesses for participating today. You all did a fantastic job.

But I do want to send a message to the CFPB. I think from the hearing that we had today, the forbearance period is agreed to by all parties, on both sides of the aisle. And I think that if a forbearance period is not granted, it is incumbent on this committee to monitor that situation. And so it is my intention to contact all the various lender associations and get with them to, if the forbearance

period is not agreed to, to have them get with us and give us examples of extreme abuses by the CFPB if they pursue this and go down this road.

Hopefully, they will be good stewards of our citizens' time and money and this will not happen, but should they not do that, we want to know about that, and we will be in contact with a lot of the representatives from the different lending groups to make sure that we monitor the situation very, very closely.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

With that, this hearing is adjourned.

[Whereupon, at 3:32 p.m., the hearing was adjourned.]



# **A P P E N D I X**

May 14, 2015

# TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process

**House Committee on Financial Services**  
*Subcommittee on Housing and Insurance*

*Thursday, May 14, 2015  
2:00 p.m.*

*Written Testimony Submitted By Diane Evans NTP, President*

AMERICAN  
LAND TITLE  
ASSOCIATION



[www.alta.org](http://www.alta.org)

**ALTA President Diane Evans, Written Testimony for May 14, 2015**  
**House Financial Services Committee – Housing and Insurance Subcommittee Hearing**

Chairman Luetkemeyer, Ranking Member Cleaver and members of the subcommittee, my name is Diane Evans and I am a vice president at Land Title Guarantee Company, a title insurance agency in Colorado. I joined Land Title Guarantee Company 34 years ago when I opened a branch in my hometown. Along with my day job, I have the privilege of serving as president of the American Land Title Association (ALTA).

Founded in 1907, ALTA is the national trade association and voice of the real estate settlement services, abstract and title insurance industry. Our member companies include title insurers, title agents, independent abstracters, title searchers and real estate attorneys. With more than nearly 12,000 locations around the country, our member companies employ more than 108,000 professionals, ranging from small, one-county operations to large national title insurers. The majority of our members are small businesses, with the average title agency earning \$156,000 in gross annual revenue and employing three or fewer people. We search and examine public records and provide title insurance products that financially protect a homebuyer's largest investment. Lastly, many of our member companies provide closing and settlement services that bring together all parties in a real estate transaction, collect and disburse funds, and record the legal instruments that complete the transaction. We provide consumers with the peace of mind that comes from knowing that a professional managed and finalized their transaction.

On August 1<sup>st</sup> of this year, the title and settlement industry will go through one of the largest and most costly regulatory changes in its history when it when it makes the changes necessary to comply with the Consumer Financial Protection Bureau's (CFPB or bureau) TILA-RESPA Integrated Disclosures (TRID) regulation.

Complying with this regulation will require more than simply updating our systems for two new disclosure forms. Getting this rule correct requires a paradigm shift in the way real estate settlements occur in this country. All of our efforts will be worth it if these new rules actually help consumers understand their real estate transaction better. After all, nobody knows better exactly how important that is than our members who sit at the table with homebuyers each day.

As president of ALTA, I have had the privilege of traveling across the country and talking to lenders, real estate agents and settlement professionals about this new regulation. The main lesson I have learned from our conversations is that the only way to implement this rule successfully is through collaboration between all the parties involved in the transaction. Unlike other regulations coming from the Dodd-Frank Wall Street Reform and Consumer Protection Act, the new timing and accuracy requirements make it impossible for industry to continue to operate in their own silos. As we prepare for August 1, industry will need to work together not only to update their software, but also reconfigure every single step of the home-buying process—from taking a homebuyer's mortgage application to closing a real estate transaction.

Another lesson I have learned from these conversations is that, while the CFPB has provided some helpful assistance and guidance to industry on implementation, we need more certainty to properly implement this rule. My testimony today focuses on two ways that Congress and the CFPB can help our industry implement the TRID regulation.

First, we urge the CFPB to allow the title and settlement industry to disclose the price of title insurance accurately to consumers on the new Closing Disclosure. For the majority of real estate transaction, the rule requires a complicated formula that will disclose to consumers an inaccurate price for title insurance. Under this new rule, the CFPB actually mandates that the correct and actual price title insurance products be withheld from consumers.

Second, the CFPB should develop and announce a plan to provide implementation support during a hold-harmless period to begin on the August 1 effective date of the regulation and continue through the end of this year. A hold-harmless period will help industry work its way through the challenges of implementation of their new processes without the fear of potential enforcement actions. Consumers need assurance that their transactions will not be disrupted due to the fear of unfounded enforcement of this paradigm shift for industry. We are working diligently to make certain we are prepared, but fear of enforcement should be the least of our concerns. More importantly, we need the flexibility to adapt real-life transactions and processes to rules written on paper.

#### **TILA-RESPA Integrated Disclosures**

In 1968, Congress passed the Truth in Lending Act (TILA) to “assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.”<sup>1</sup> The Real Estate Settlement Procedures Act (RESPA) was enacted by Congress six years later.

For nearly 50 years, these laws required lenders and settlement agents to provide consumers with similar but different disclosures at the beginning and end of their mortgage and real estate transactions. However, these laws changed when Congress adopted Section 1032 of the Dodd-Frank Act, which required the CFPB to “propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure.” The bureau started this rulemaking process in 2011, issuing a final rule in November 2013 and an implementation date of August 1, 2015, which is now just 78 days away.

With the final rule, the CFPB created two new mortgage disclosure documents. A three-page Loan Estimate will replace the current up-front Truth in Lending disclosure and Good Faith Estimate. A five-page Closing Disclosure will replace the final Truth in Lending disclosure and the HUD-1 Uniform Settlement Statement. The bureau also imposed new timing and accuracy requirements for these new disclosures that may have a significant impact on a consumer’s real estate transaction.

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<sup>1</sup> 15 U.S.C. §1601.



The biggest change that will affect the closing process is the rule's new timing requirement for delivery of the new forms. Today, most consumers receive their HUD-1 at the closing table or at most 24 hours beforehand. However, the new rule requires that consumers receive their Closing Disclosure documents three days prior to closing. If certain things change within this three-day period,<sup>2</sup> the consumer must receive an updated disclosure and wait an additional three days before closing. This three-day disclosure requirement in actuality becomes a seven-day requirement if the lender chooses to deliver the Closing Disclosure to the consumer by any means other than hand delivery. Getting the Closing Disclosure to the consumer three days prior to closing requires lenders and settlement agents to rework all of their current processes completely, which also means all transaction fees must be finalized much earlier in the process.

Additionally, TRID will not apply to mortgage applications already in process when August 1<sup>st</sup> arrives. Also, the new disclosures will not apply to all consumer mortgages. Because of these two reasons, lenders and settlement agents will need to maintain dual systems and train their staff to comply with differing sets of disclosure requirements for various transactions. This is costly and confusing for industry, not to mention the consumer.

#### **Industry Efforts to Prepare for August 1**

Getting ready for August 1<sup>st</sup> is an enormous challenge that will not come cheap to the industry or to consumers. According to the CFPB's own estimates, implementing this new process will cost our industry \$67,800,000 per year over the next five years. For lenders the cost is even higher, at \$207,000,000 per year for the next five years. With a total price tag of more than \$1.3 billion dollars, the cost of implementing this regulation comes out to \$34 per mortgage transaction over the next five years—and this doesn't even include the costs of new tools to help facilitate the collaboration that will be required by this regulation. This is a lot of additional expense that will mostly be absorbed by small businesses<sup>3</sup> or the consumer, all with the intent of improving consumer understanding of their mortgage. I sincerely hope the results are justified.

Last month, ALTA conducted a survey that asked our members about their readiness for these changes. The more than 550 people from across the country who responded to our survey include title agents, underwriters, real estate attorneys and abstracters. The results present a helpful glimpse into our industry's preparedness for August 1, highlighting a few areas where the industry needs help from the CFPB.

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<sup>2</sup>The final rule requires a new three day waiting period in three instances: (1) a change in the annual percentage rate of 1/8 of a percent for transactions with a regular payment stream (or ¼ of a percent for transactions with an irregular payment stream); (2) a change in one of the rules three specific loan products or five specified product features; or (3) the addition of a pre-payment penalty. This is a vast improvement over the proposed rule where virtually any change except de minimis ones under \$100 aggregate would have caused a new waiting period.

<sup>3</sup> According to the CFPB final rule, 85% of lenders, brokers and settlement agents impacted by this rule qualify as small businesses. 78 FR 80094.

After reviewing the survey results, I am confident that ALTA's members will be ready to close transactions under this rule on August 1<sup>st</sup>. My assurance comes from the 92 percent of respondents who stated that they are on schedule for implementation or are confident that they will be prepared by August 1. I am proud of these results because of the extraordinary efforts ALTA and others have undertaken to help the industry prepare for August 1.

A key component of being prepared is updating software systems in order to share data and produce the new disclosures that will be required come August 1. I am encouraged that slightly more than half of our survey respondents have either already seen their updated software or have scheduled a demonstration.

Software developers have been working tirelessly since 2013 to update their products. I can tell you this is no small feat. According to one title company that uses internally-developed software, the cost to update their systems for TRID has been over \$490,000 and has required the efforts of six full-time employees over a 12-month development cycle. With the need for significant staff training on the new processes needed to meet these regulatory requirements, it is crucial that companies complete installation of new software well ahead of August.

However, I fear buyers and sellers will face potential delays to closing—especially in the first few months of this new regulation.

Since this regulation was finalized, the title insurance and real estate settlement industry has focused on cross-industry collaboration to help insure the success of the CFPB's mandates. We have been working closely with the Mortgage Bankers Association, the National Association of Realtors, the American Escrow Association and other partners to lead by example and educate our members on this new rule through a series of collaborative forums across the country.

Each forum has brought together lenders, title insurance professionals, and technology and legal experts to review the rule and offer our attendees guidance on preparing for implementation. We have already conducted forums in Los Angeles, Miami, Dallas, Chicago and Washington, D.C. Because of high demand, we will host a sixth forum in Denver next month.

This same level of preparation has been happening throughout the industry. I can tell you that my own company has already trained over 1,000 real estate agents, 300 lenders and their employees as well as the employees of some 60 homebuilders. While this training has diverted a significant amount of our staff away from their regular jobs, it will be well worth it if we can help get all of our partners ready.

Even with the confidence that our members will be prepared, I am concerned because much of the final training and implementation will take place during what the National Association of Realtors has determined is the busiest time of the year for real estate closings—

right when thousands of families will be relocating prior to the new school year.<sup>4</sup> Some of the disruption could be mitigated if the bureau would adopt two recommendations.

#### **Fix the Inaccurate Disclosure of Title Insurance Premiums to Homebuyers**

The ultimate purpose of TRID is to help consumers better understand their mortgage transactions. Educating homebuyers about their loans is important to our members as well. For the most part, the new disclosures will focus on the most important pieces of information consumers want to know about their real estate transaction. However, these disclosures will fail to meet their goal in one crucial area: helping consumers understand the costs associated with title insurance.

Unfortunately, the new disclosure forms prohibit our industry, by law, from disclosing the actual cost of the title insurance policies. This is because the CFPB has created a formula which—in most states—incorrectly discloses the cost of title insurance. This is the only item that will be inaccurate on these new forms. Furthermore, the CFPB created a formula that is wrong in most states and prevents industry from using the best information reasonably available to them.

In the majority of states, when a homebuyer purchases a lender's title insurance policy concurrently with an owner's title insurance policy, the lender's policy is typically issued at a discounted rate. This is often called "simultaneous issue pricing." This discount is offered because much of the title search, examination and underwriting that goes into preparing a lender's title insurance policy also supports the owner's policy.

However, in all transactions, TRID requires lenders and/or settlement agents to disclose the lender's title insurance premium at its full rate on the Loan Estimate and Closing Disclosure documents— even though this discount exists and directly benefits the homebuyer. Consequently, TRID then requires the owner's title insurance premium to be inaccurately disclosed on the forms. As the example from California shows below, the result is that (in most states) the Closing Disclosure will not provide consumers with the accurate cost of title insurance.

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<sup>4</sup> Hale, Danielle. "Part 1: EHS in 2014 by the Numbers – Popular Closing Dates." *Economist Commentaries: National Association of Realtors*, 12 Jan. 2014. <http://economistsoutlook.blogs.realtor.org/2015/01/12/part-1-ehs-in-2014-by-the-numbers-popular-closing-dates/> (last accessed 09 Apr. 2015).

## California

Here is how the rule works when applied to a transaction where the sales price is \$200,000 and there is a \$190,000 loan:

### The Rule

vs.

### Reality

<b>OTP on Closing Disclosure = \$676.00</b> (OTP Premium) \$902.00 (LTP Simultaneous Premium) + \$409.00 (Full LTP Premium) - \$635.00	<b>OTP Actually Charged = \$902.00</b> (OTP Premium)
<b>LTP on Closing Disclosure = \$635.00</b> (Full LTP Premium, with no discounts for Simultaneous Issue)	<b>LTP Actually Charged = \$409.00</b> (LTP Simultaneous Premium)

#### **Terminology Key:**

OTP: Owner's Title Insurance Policy  
 LTP: Lender's Title Insurance Policy

**LTP Simultaneous Premium:** a discounted lender's title insurance premium that is issued in accordance to promulgated state rates or insurance company filed rates when both a lender's and owner's title insurance policies are simultaneously issued

We urge the bureau to address this issue immediately and allow the lenders and settlement agents to disclose the actual price of title insurance on the disclosures. If the bureau does not fix this issue, the disclosures will be wrong and fail to meet the goal of TRID to provide consumers better information regarding the costs of obtaining a mortgage. And it's not just consumers who are confused by the bureau's formula. According to ALTA's survey, 52 percent of industry respondents did not understand or were not sure how to properly disclose the simultaneous issue rates on the new disclosures.

ALTA believes that the best way to address this issue is to modify the Official Interpretations to allow our industry to disclose title premiums based on the same standards they must use for disclosing all other costs. This would let lenders communicate to the consumer the actual costs based on the best information reasonably available to the lender. We believe the appropriate solution is for the bureau to modify the Official Interpretation as follows:

#### **Comment 37(f)(2)-4:**

Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender's title insurance policy. However, an owner's title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed pursuant to § 1026.37(g). Accordingly, the creditor must quote the amount of the lender's title insurance coverage pursuant to § 1026.37(f)(2) or (3) as applicable based on the type of lender's title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender's title insurance policy pursuant to § 1026.37(f)(2) or (3) is the amount of the premium **based on the best information reasonably available to**

~~the creditor at the time of disclosure, without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy.~~ This amount may be disclosed as "Title —Premium for Lender's Coverage," or in any similar manner that clearly indicates the amount of the premium disclosed pursuant to § 1026.37(f)(2) is for the lender's title insurance coverage. See comment 37(g)(4)-1 for a discussion of the disclosure of the premium for an owner's title insurance policy that covers the consumer.

**Comment 37(g)(4)-2:**

The premium for an owner's title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender's and an owner's policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:

The title insurance premium for a lender's title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3), **except that the creditor may instead disclose the premium subject to any special rate available based on the simultaneous issuance of a lender's and owner's policy, if such purchase is known to the creditor when issuing the Loan Estimate.**

The owner's title insurance premium is calculated by taking the full owner's title insurance premium **subject to any special rate that may be available based on the simultaneous issuance of a lender's and an owner's policy,** ~~adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage.~~

**Comment 38(g)(4)-2:**

In a jurisdiction where simultaneous issuance title insurance rates are permitted, any owner's title insurance premium disclosed under § 1026.38(g)(4) is calculated by using the full owner's title insurance premium **subject to any special rate that may be available based on the simultaneous issuance of a lender's and an owner's policy,** ~~adding any simultaneous issuance premium for issuance of lender's coverage, and then deducting the full premium for lender's coverage disclosed under § 1026.38(f)(2) or (f)(3).~~

While we appreciate that the bureau is attempting to show consumers the marginal cost of purchasing on owner's title insurance policy; we are greatly concerned about the confusion it will cause consumers. Additionally, we believe the bureau's requirement that our industry inaccurately disclose consumers' costs for title insurance will expose ALTA members to unreasonable consumer complaints. Plus, the rule will actively dissuade homebuyers from purchasing financial protection for their largest investment.

Additionally, title insurance is regulated at the state level. The bureau's rule potentially puts members of the title and settlement industry at risk of violating state regulations. Under state insurance laws, title insurance companies are only allowed to charge the policy premium rates

promulgated or filed with the state. If the bureau declines to fix this problem, our industry will likely have to address such states' legal requirements by providing a second disclosure to the homebuyer showing the actual premium cost. These additional disclosure forms will likely contribute to homebuyer confusion regarding the actual costs of their title insurance policies, closing costs and homeownership in general.

In those states where it's common for a seller to purchase an owner's title insurance policy for the buyer, the total disclosed rate for the owner's policy will be insufficient to cover the seller's contribution because it will be artificially deflated. An adjustment will be needed to accurately disclose the extra amount of cash the seller will need to provide to the borrower to cover the actual amount of the owner's policy.

The bureau has refused to provide written guidance as requested by our industry. In ALTA's survey, 62 percent of respondents stated that they were unsure about how to make this adjustment when they know it inaccurately states the actual cost a consumer will pay. Without this guidance, lenders and settlement agents risk potential enforcement actions and must decide for themselves how to make this adjustment. This continuing lack of clarity will result in consumers being caught in the middle, facing potential and unnecessary delays at closing time. It will also force lenders and settlement agents to guess about what the CFPB will find acceptable. We urge the bureau to provide formal written guidance on how to make this adjustment.

#### **Need for Formal Hold Harmless Period from August 1 to December 31**

Unfortunately, our industry's comprehensive preparation efforts may not ensure that consumers' real estate closings will not be disrupted beginning August 1. The Bureau's reluctance to provide more written guidance throughout the implementation period, and the unforeseen issues that always arise with a regulatory change of this magnitude, make a hold-harmless period crucial.

A hold-harmless period will allow our industry to adapt its business processes to comply with this regulation without the fear of potential enforcement actions. This will allow the industry more flexibility in meeting consumer's needs as we transition to new TRID processes. While the goal of slowing down a consumer's transaction may seem worthy, delays can also cause unnecessary cost and disruption to a homebuyer. As with any new rule or change, tolerance to those attempting to comply in good faith needs to occur in aiding the successful implementation.

We remain appreciative that the bureau has provided our industry with 21 months to reform our processes and train our staff to meet these new regulatory demands. Not only has this time been crucial for our vendors as they completely redevelop their software programs to meet the new requirements of this rule, it has also been crucial for lenders, whose training the bureau estimates will take at least 2.8 million hours. Most of the time, this training can only begin once the updated software has been delivered.

However, we know from implementing past regulations that there will be a learning curve. Unforeseen issues will surface once the new forms are used in real homebuyer

transactions. Just like with sports, no matter how much you practice there are always going to be some adjustments you need to make during a game or match. This new rule completely changes the game in respect to the home-buying process. It will take greater collaboration between all the players—title and settlement agents, lenders, Realtors, attorneys, homebuilders, appraisers and others—to get deals completed efficiently and compliantly with the ultimate goal of better serving the consumer. This will take time. It will take practice. It will require adjustments. Therefore, we request that the bureau publicly commit to making August 1 through December 31 of this year a hold-harmless period for enforcement.

The title and settlement industry remembers well the challenges that were experienced in January of 2010 with the implementation of just one new form, the 2010 HUD-1 settlement statement. Even with that relatively easier regulatory change, there were many questions in the first few months about how to appropriately disclose certain costs and where certain items were disclosed on the form. Thankfully, HUD provided for a hold-harmless period to help our industry work out these kinks. While there were some delays, industry was able to work together to resolve these conflicts and, more importantly, to help consumers' transactions move forward without fear of unnecessary enforcement.

On behalf of myself and our ALTA members, I want to thank you, Chairman Luetkemeyer, and Financial Institutions Subcommittee Chairman Neugebauer, for your leadership on this issue. We appreciate the opportunity to make the case for a hold-harmless period to CFPB Director Cordray. I also want to thank Congressmen Pearce and Sherman for sponsoring HR 2213, which would establish a formal hold-harmless period until the end of this year. I ask the other members of this committee to join them and cosponsor HR 2213.

In the absence of a hold-harmless period, it is likely that many mortgage lenders (or their investors) and settlement service providers will take an overly cautious approach to risk management. For example, uncertainty about what type of evidence is sufficient to verify that the consumer received the Closing Disclosure on time is likely to lead industry to factor in additional timeframes when delivering disclosures to consumers. It is the uncertainty surrounding the three-day advance disclosure requirement that led 87 percent of our survey respondents to say that they believe there is a higher risk that closings will be delayed in the first few months using the new disclosures. In fact, after learning all the new processes and requirements, the potential for delays to closing were the second biggest concern our survey participants had about implementation.

To be truly effective, a hold-harmless period needs to be accompanied by a commitment from the CFPB to work with industry to gather data about implementation. The bureau should also provide written guidance to address common industry implementation hurdles that emerge between now and the end of the year. The bureau's Official Interpretations, compliance guides and webinars on the regulation have been very helpful to industry but they are not comprehensive. Written guidance is needed in many areas to clarify the regulation. We urge the bureau to commit the resources to providing this written guidance as soon as possible.

We are also grateful that CFPB staff has participated in each of our collaborative forums. Bureau staff was able to hear directly from industry about some of the many implementation challenges faced by those affected by the new rules. Staff members have provided informal

answers to many of the frequently asked questions at the forums. While the unofficial and unwritten dialogue the bureau provided at the forums has been helpful, it is not something that industry can rely upon and does not alleviate the uncertainty. As one attendee from our Chicago forum stated, “[I was] disappointed with CFPB representatives and their disclaimer. We came to get answers, but the CFPB would not commit to anything they said.”

### **Conclusion**

The title industry is working diligently to prepare for this sea change to the real estate closing process. While we support the CFPB’s efforts to improve consumers’ understanding of their mortgage and real estate transaction, we need more support from the bureau to ensure that the goals of this rule are met through its implementation. As the industry that sits across the table from buyers and sellers every day, we speak with the knowledge and authority of what happens in real-life transactions.

I appreciate the opportunity to discuss why creating a hold harmless-period and allowing the correct disclosure of actual title insurance premiums will aid the industry as it implements the TRID regulation. ALTA is eager to serve as a resource to this Subcommittee, and I am happy to answer any questions.





**Statement of**

**Laurie S. Goodman**

**Director, Housing Finance Policy Center**

**The Urban Institute**

**before the**

**U. S. House of Representatives Committee on Financial Services**

**Subcommittee on Housing and Insurance**

**TILA-RESPA Integrated Disclosure:  
Examining the Costs and Benefits to the Real Estate Settlement Process**

**May 14, 2015**

Mr. Chairman, Ranking Member Cleaver, and members of the committee, thank you very much for the opportunity to testify today. My name is Laurie Goodman, and I am the director of the Housing Finance Policy Center (HFPC) at the Urban Institute. The Urban Institute is a non-partisan, non-profit, social and economic policy research organization located in D.C. Founded in 1968, the Urban Institute brings decades of objective analysis and expertise to policy debates. HFPC is dedicated to providing timely, data-driven analysis of policy issues relating to housing finance and the housing market. Prior to joining the Urban Institute two years ago, I spent almost thirty years as a mortgage-backed securities research analyst and as head of securitized products research/strategy at several firms, including Amherst Securities Group LP and UBS. The views expressed in this testimony are my own and should not be attributed to the Urban Institute, its trustees or its funders.

Today, I will discuss the TILA-RESPA Integrated Disclosure and make the case for a hold-harmless period through the end of 2015. I will then explain my view that this is a minor operational issue in a housing finance system that is in limbo. While there has been significant progress made to reform the Government Sponsored Enterprises (GSEs) through administrative channels, there has been little progress through legislative channels. This presents an opportunity for Congress to make a real difference. But Congress must proceed carefully and thoughtfully, with a realization that the system remains fragile, and is failing to serve many credit-worthy borrowers.

#### **TILA-RESPA Integrated Disclosure (TRID)**

For years the real estate settlement process has been cumbersome and unnecessarily complex. At closing the borrower receives two sets of disclosure documents, generally understands neither, and faces closing costs that are much higher than expected. The disclosure documents are those required under the Truth in Lending Act (TILA) and those required under the Real Estate Settlement Procedures Act (RESPA); both rules are administered by the Consumer Financial Protection Bureau (CFPB). TILA was formerly administered by the Federal Reserve Board, and RESPA was formerly administered by the U.S. Department of Housing and Urban Development (HUD). The Dodd-Frank Wall Street Reform and Consumer Protection Act, passed in 2010, transferred authority for both sets of rules to the Consumer Financial Protection Bureau (CFPB) and required the CFPB to promulgate a rule combining the two sets of disclosures into one consumer-friendly form. Even though the disclosures were to be combined into a single integrated disclosure for mortgage loan transactions, it took the CFPB several years because the TILA and RESPA provisions governing timing, responsibility, and liability for the disclosures were not entirely consistent, and were not legislatively amended, leaving the CFPB with a very large reconciliation project. In addition, the CFPB did extensive consumer testing and offered numerous rounds of feedback. The CFPB completed their rulemaking in November,

2013, two substantive modifications were made in January, 2015, and the rule is scheduled to go into effect on August 1, 2015.

Under the new TRID rules, the two disjointed disclosures will be replaced with two new documents: the Loan Estimate, which replaces the initial Truth in Lending (TIL) and the Good Faith Estimate (GFE); and the Closing Disclosure, which replaces the closing TIL and the HUD-1. The Loan Estimate is required within three business days of the application's completion; this timing requirement is consistent with today's disclosures. However, the Closing Disclosure, detailing all costs, must be provided three days prior to closing, which represents a significant change for the industry; the documents have historically been provided on the closing date, although more general disclosures were required in advance.

The Loan Estimate details the costs of settlement services (appraisals, inspections, etc.), as well as good-faith estimates on prepaid interest, property insurance premiums, escrow accounts, charges paid to third party service providers selected by the consumer that are not on the lender's list of service providers, and charges for third-party servicers not required by the lender. The final CFPB rule restricts the circumstances under which consumers can be required to pay more for settlement services than is stated on the Loan Estimate form. Unless an exception applies, prices for the lender's or broker's own services, charges for servicers provided by an affiliate of the lender or mortgage broker, and charges for services for which the lender or mortgage broker does not permit the consumer to shop cannot exceed the amount stated in the Loan Estimate. Charges for other third-party services can exceed that stated in the Loan Estimate, but not by more than 10 percent. Exceptions include situations in which the consumer asks for a change, chooses a service provider not identified by the lender, or provides inaccurate information on the loan application, and situations when the loan application information becomes inaccurate or the loan estimate expires. To the consternation of many lenders, the rules seem to be silent on what happens when the closing date is significantly delayed. For example, the rule states that if the interest rate was not locked at the point of origination, when the rate is locked, a new Loan Estimate must be provided within three days. It is unclear if a borrower can be charged for a new rate lock if the borrower contributed to a delay.

The closing document, which states the actual terms of the transaction and the actual costs associated with the settlement of that transaction, must be provided by either the lender or the settlement agent. However, as with the Loan Estimate, the creditor has the ultimate responsibility and liability for ensuring the disclosure is done properly. If a change occurs after the Closing Disclosure is initially provided, but before closing, the creditor is generally permitted to provide a revised Closing Disclosure at or before closing. The only changes that require a new three-day waiting period are a change in the Annual Percentage Rate (APR) of more than one-

eighth of 1 percent above or below the disclosed APR, a change in the loan product, or the addition of a prepayment penalty.

If implemented properly, this new regime should significantly improve the consumer experience. The CFPB conducted extensive consumer tests with these documents after the release of the rules, gathering feedback and revising accordingly. The components on the forms are transaction-specific and only include information related to the borrower's transaction. There are very detailed requirements relative to the organization and presentation of the content, including the number of tables, the order of the fees, and specific information about bolding, rounding, and aggregating of information, all of which are meant to enhance the borrower's experience.

**Need for a hold-harmless period.** While I believe the CFPB has done a good job, and the result would definitely improve the closing experience for the borrower, I am concerned that the August 1 implementation date is too tight for many lenders, and I would encourage the CFPB to provide a reasonable hold-harmless period through the end of the year, following the August 1 effective date of the TRID regulation. According to an April study by Capsilon Corp., reported in National Mortgage News, 41 percent of mortgage lenders say they are not ready for the August 2015 TRID implementation. The study, polling more than 100 executives from leading lenders during the Mortgage Bankers Association technology conference in early April, found only 12 percent of respondents felt "very prepared" for the August requirements.

Why should lenders need a postponement for rules largely finalized in November, 2013? New data fields were required to comply with the rules, as the customization of the forms required new data elements. The data standards to support the new Loan Estimate and Closing Disclosure were not available until MISMO 3.3 (Version 3.3 of the Mortgage Industry Standard Maintenance Organization Reference Model) which was first released in February, 2015. Why was MISMO 3.3 so late? It could not be released until Fannie Mae and Freddie Mac issued the final version of their Uniform Closing Dataset (which has 899 elements).

Systems to support the new TILA-RESPA Integration must be developed to interact with the new version of MISMO, so systems development could not move very quickly until the data elements were in place. Some lenders use vendor systems, some lenders use their own systems exclusively, other lenders use vendor modules for items like this (which must then be integrated into the lender's own loan origination systems). In addition, some institutions that use vendor systems, use different vendor systems for quality control, which requires not only integration with the lender's own systems, but also with other vendor systems. Vendor systems that address the new TILA-RESPA requirements are currently being delivered, often in a beta or preliminary state and integration is, for many lenders, still in process. Finally, staff training, an

essential part of making the systems work as designed, cannot really start until the systems are up and running.

While the lender has the ultimate responsibility for implementing these changes, as well as for making sure that each and every loan fulfills the TILA-RESPA requirements, the lender deals with many different vendors including mortgage brokers, title insurance agents, attorneys, closing (settlement) agents, and pest inspectors. Each of these parties must be integrated into the process as well. The lenders must set up systems to track approved vendors and their fees, and have a mechanism that allows approved vendors to communicate changes in those fees. This includes vendors in the 0 percent tolerance categories, as well as those in the 10 percent tolerance category (pest inspectors, title insurance agents, settlement agents). Compliance systems must be developed to monitor all of these vendors.

In short, even though lenders have had a long time to implement this rule, time which, arguably, they could have made better use of, the operational issues are overwhelming, and many institutions are not yet completely set up, or have not adequately tested their capacity to handle these issues. There will be many institutions using manual work-arounds until all their systems work together seamlessly. A hold-harmless period will allow both the CFPB and lenders to work through all these issues, from vendor management to the clarification of the rules applicable to a delayed closing.

A hold-harmless period will force implementation on August 1, but will give industry participants an important learning period. Without this period, the severe consequences for errors under TILA may cause lenders to reduce originations, ultimately harming the borrowers this was designed to help.

Ultimately, TRID, if implemented properly, should result in a vast improvement in the consumer experience. Let's give the lenders the breathing room they need to do this right.

#### **The Path Forward**

It is important to realize that the TILA-RESPA Integrated Disclosure is a minor operational issue, overwhelmed in importance by the much broader question of what the future state of the housing finance market will look like. Thus far there has been no legislative housing reform, nor does such reform appear likely in the near term. The Federal Housing Finance Agency (FHFA) has made great strides to place the GSEs on the path many of us, including myself, hoped legislative reform would take us. In particular, I believe, as does a strong bipartisan contingent, that the goals of legislative reform should be to preserve the 30-year fixed-rate mortgage, assure broad access to credit, and move the bulk of the risk to the private market.

Among this group, there has been a growing recognition that the government and hence the taxpayer must bear the catastrophic risk, but this should be insulated behind the private capital so that the risk that it is ever tapped is remote. The argument for the government to bear the catastrophic risk: it is necessary if the 30-year fixed-rate mortgage is to remain affordable; without a government guarantee, mortgage loans are not fungible, liquidity is compromised, and the cost of all mortgages goes up. Moreover, without a liquid market, lenders would not be able to sell mortgage loans forward, hence making it significantly more costly for borrowers to lock their rate before closing. Essentially, the so-called TBA (to be announced) market, in which pools of mortgages can be bought and sold on a forward basis without knowing exactly which loans are included, is critically dependent on the government guarantee.

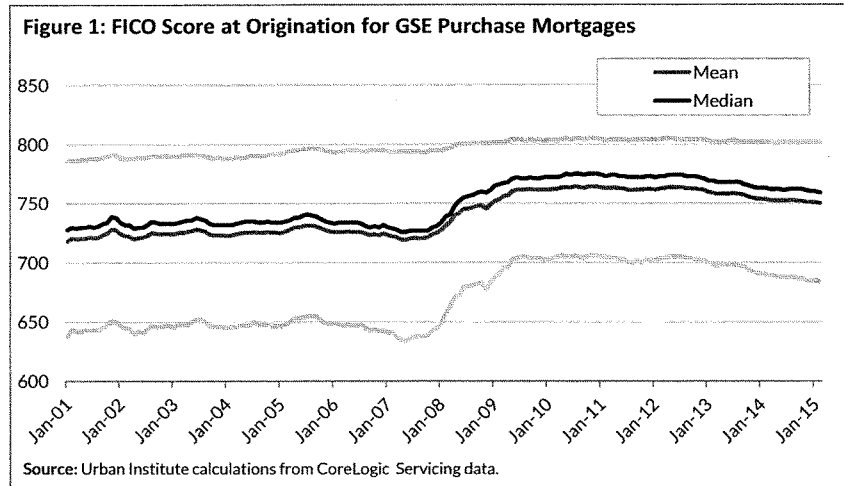
While there is a developing bipartisan consensus on the goals of GSE reform, there has been little legislative consensus on how to accomplish GSE reform. And it seems unlikely that the necessary consensus can be developed before the next presidential election. While the ultimate resolution of the GSEs will require Congress, the FHFA has taken actions to reduce taxpayer risk, improve the system's functions, and expand access to credit. We will first review the actions taken by the FHFA, then discuss the limitations to administrative reform.

In 2012, under former Acting Director Ed DeMarco, the FHFA outlined the strategic goals under which it would move forward. This basic vision, albeit with some changes in emphasis, has continued under the leadership of Director Mel Watt. In its 2014 Strategic Plan, FHFA outlined its reformulated strategic goals:

- maintain, in a safe and sound manner, foreclosure prevention activities and credit availability for new and refinanced mortgages to foster a liquid, efficient, competitive, and resilient national housing finance market;
- reduce taxpayer risk through increasing the role of private capital in the mortgage market; and
- build a new single-family securitization infrastructure for use by the GSEs and adaptable for use by other participants in the secondary market in the future.<sup>i</sup>

#### **Credit Availability**

The first goal is to enhance credit availability. Following the collapse of the housing market in 2008, the GSEs tightened their credit standards. However, on top of these already prudently tight credit standards, some originators have imposed additional conditions such as higher minimum credit score requirements. Figure 1 shows FICO scores over time for GSE borrowers purchasing a home. Note that the mean score has gone from 722–725 in the 2001 to 2007 period, rose sharply to 762 by 2011, and has tapered to 752 in 2014. The 10<sup>th</sup> percentile of scores has moved up even more dramatically, from 644 in 2001 to 688 in 2014.



These credit overlays resulted from a number of factors. First, lenders fear that if they make a loan and it later goes on to default, the GSEs will find some small defect in the loan, and will put the loan back to the lender, as is permitted under the GSE Representation and Warranty framework. Second, the costs of servicing delinquent loans are high and very variable. Finally, lenders fear litigation risk. While the final element is beyond the control of the FHFA, the first two are within their scope and they have taken extensive actions to respond to lender concerns while maintaining the sound operation of the GSEs.

**Rep and warrant clarity.** Recognizing that the lack of clarity about the representation and warranty requirements has contributed to the overlays, the GSEs have made a number of attempts to clarify these requirements, and to inform lenders that they will be held responsible only for defects in the loan manufacturing process, not the advent of a serious delinquency. These actions include the introduction of sunsets, clarifications of life of loan exclusions and earlier due diligence.

In September, 2012, the FHFA, Fannie Mae and Freddie Mac each announced a new rep and warrant framework, effective on January 1, 2013, in which rep and warrant relief was provided for loans with 36 months of consecutive, on-time payments. For Home Affordable Refinance Program loans, rep and warrant relief was provided after 12 months of on-time payments. In May, 2014, the sunset eligibility requirements were relaxed to allow loans with no more than two 30-day delinquencies and no 60-day delinquencies during the applicable 36- or 12-month period to qualify.

In November 2014, the Watt FHFA put out detailed clarifications of the rep and warrant claims that run for the life of the loan and do not sunset. These life-of-loan exclusions include (1) misrepresentations, misstatements and omissions; (2) data inaccuracies; (3) charter compliance issues; (4) first-lien enforceability or clear title matters; (5) legal compliance violations; and (6) unacceptable mortgage products. The first two items received the most attention, as they were the focus of originator fears. A misstatement, for example, must involve at least three loans delivered to the GSE by the same lender, be “significant,” and be made pursuant to a common activity involving the same individual or entity.

The most important shift is that the GSEs are identifying loans with manufacturing defects much earlier in the process, giving lenders feedback and greater certainty. Think of it this way: if students are walking into a final exam and they have turned in homework all semester, taken the midterm and received their grades on both the homework and midterm, they will be far more comfortable than they would be if the course only had a final exam, and they had received no feedback. The ultimate goal is that the detection systems improve to the point that detection can be done at the point of origination. For example, if the appraisal is within a certain tolerance of the value computed by the GSEs automated system, the GSE should be able to assure the lender they have no further liability on the appraisal.

**Servicing delinquent loans.** The high costs and uncertainty associated with servicing are a contributing factor to lender overlays. The GSEs have always required servicers to pay compensatory fees if the servicer’s timeline to foreclose exceeds the “allowable delays”, timelines published by the GSEs due to factors within their control. Before November 2014, these state-by-state limitations were so tight that two out of three loans that went through foreclosure were flagged as over the allowable limit. While a servicer is not responsible for “uncontrollable delays” once a loan is flagged, the servicer must establish the extent of such delays on a loan-by-loan basis, a cumbersome process with an uncertain outcome. In November 2014, the timelines were recalibrated and extended, so only 40 percent of the loans would exceed the target. In addition, Lenders whose compensatory fees are under \$25,000 for the month are exempt from these compensatory fees; this effectively exempts many smaller lenders.

#### **Increasing the Role of Private Capital**

The FHFA’s Strategic Plan calls for Fannie Mae and Freddie Mac to reduce taxpayer risk by increasing the role of private capital in the mortgage market. This is to be done through four channels: deepening the credit risk transfers for the GSEs’ single family credit guarantee businesses, ensuring the stability of the mortgage insurance companies that the GSEs depend upon for taking the first loss risk on mortgages over 80 LTV (the Private Mortgage Insurance



Eligibility Requirements [PMIERS]), continuing with multifamily transactions that share credit risk with market participants, and the ongoing reduction of the GSEs' retained portfolio.

#### Single Family Credit Risk Sharing Arrangements and PMIERS

Credit risk sharing arrangements can be broken down into two types: risk sharing of loans already in portfolio (back-end risk sharing) and risk sharing of loans at the point of origination (front-end risk sharing). Thus far, the GSEs have focused primarily on the back-end risk sharing arrangements.

Freddie Mac did the first credit risk transfer deal in mid-2013 through its Structured Agency Credit Risk (STACR) shelf, and has since completed a total of 11 transactions, laying off part of the risk on \$281.1 billion of its \$1.6 trillion total portfolio, or 18.1 percent of its book of business. Fannie Mae, through its Connecticut Avenue Securities (CAS) Shelf, has completed 7 transactions, laying off part of the risk on \$299.2 billion of its \$2.5 trillion total portfolio, or 11.4 percent of its book of business. Table 1 provides a comprehensive list of the STACR and CAS transactions to date.

<b>Table 1: CAS and STACR Deals</b>		
<b>Fannie Mae – Connecticut Avenue Securities (CAS)</b>		
<i>Date</i>	<i>Transaction</i>	<i>Reference Pool Size (\$ millions)</i>
October-13	CAS 2013 – C01	\$26,756.40
January-14	CAS 2014 – C01	\$29,308.70
May-14	CAS 2014 – C02	\$60,818.48
July-14	CAS 2014 – C03	\$78,233.73
November-14	CAS 2014 – C04	\$58,872.70
February 2015	CAS 2015 – C01	\$50,192.00
<b>Fannie Mae Total Reference Collateral</b>		<b>\$299,182.00</b>
<b>Percent of Fannie Mae's Total Book of Business</b>		<b>11.40%</b>
<b>Freddie Mac – Structured Agency Credit Risk (STACR)</b>		
<i>Date</i>	<i>Transaction</i>	<i>Reference Pool Size (\$ millions)</i>
July-13	STACR Series 2013 – DN1	\$22,584.40
November-13	STACR Series 2013 – DN2	\$35,327.30
February-14	STACR Series 2014 – DN1	\$32,076.80
April-14	STACR Series 2014 – DN2	\$28,146.98
August-14	STACR Series 2014 – DN3	\$19,746.23
August-14	STACR Series 2014 – HQ1	\$9,974.68
September-14	STACR Series 2014 – HQ2	\$33,434.43
October-14	STACR Series 2014 – DN4	\$15,740.71
October-14	STACR Series 2014 – HQ3	\$8,000.61
January-15	STACR Series 2015 – DN1	\$27,600.00
March-15	STACR Series 2015 – HQ1	\$16,551.60
April-15	STACR Series 2015 – DNA1	\$31,875.70
<b>Freddie Mac Total Reference Collateral</b>		<b>\$281,059.44</b>
<b>Percent of Freddie Mac's Total Book of Business</b>		<b>18.11%</b>
<b>Sources: Fannie Mae, Freddie Mac, and Urban Institute.</b>		

These deals are evolving over time: the typical deal structure prior to 2015 was that Freddie or Fannie kept a small first loss piece, then sold then next 2.7–4.2 percent of the risk, and retained the remaining risk. In STACR 2015 DN1 and subsequent deals, Freddie sold the first loss piece. The most recent Freddie deal, STACR 2015- DNA1, completed in April, 2015 was the first deal in which Freddie Mac calculated losses based on actual severity rather than based on a pre-set severity schedule. In addition to these capital market executions, both Freddie and Fannie have completed several reinsurance arrangements, laying off risk already on their books.

By contrast, front end risk sharing is very much in its infancy. Fannie Mae has completed three transactions in which it allowed the originator to share risk at the point of origination in exchange for a meaningful reduction in g-fees: one with JPMorgan Chase, one with Redwood Trust and most recently, one with PennyMac. This type of transaction must, by its nature, be restricted to larger originators. The MBA has proposed a slightly different type of risk sharing: deep mortgage insurance, which insures the value of the mortgage down to a level where the GSEs are unlikely to take a loss. Currently standard mortgage insurance will take a 95 percent LTV loan to 67 percent. Deep mortgage insurance would bring it down to, say 50 percent LTV. This could be done on a loan-by-loan basis, making it more attractive for smaller entities.

One prerequisite for front-end risk sharing is that the private mortgage insurance counterparties be in a strong enough financial position that Fannie and Freddie are willing to take on additional counterparty risk with these entities. That is, the PMIs are vital to the system; the GSEs are required by charter to have first loss credit enhancement to support mortgages with loan-to-value ratios in excess of 80 percent. Private mortgage insurers have provided the major mechanism by which the GSE's are able to meet this requirement. However, the financial crisis exposed weaknesses both from a financial and operational perspective; leaving the GSEs to in some cases take losses as a result of weak PMI counterparties. The PMIERS rules that were announced in April, 2015, addressed the operational issues and increased the capital requirements for these institutions. The capital requirements are now set such that the PMIs can meet their obligations, even under very adverse market conditions. This should pave the way for front end risk sharing using deep MI.

The direction for bringing capital back is well in place. The FHFA strongly believes that the GSEs should aggressively ramp up their credit risk transfer operations and should have a wide variety of credit risk transfer tools available. The 2015 Strategic Scorecard requires that Fannie Mae transact credit risk transfers on reference pools of single family mortgages with an unpaid principal balance (UPB) of at least \$150 billion; Freddie Mac's requirement is \$120 billion. By contrast the 2013 requirement was \$30 billion apiece and the 2014 requirement was \$90 billion apiece. The 2015 scorecard requires that each GSE use at least two types of credit risk transfer

structures. It is likely that private capital will continue to return to the housing market through these credit risk transfer transactions.

#### **Multifamily Credit Risk Transfers**

On the multifamily side, credit risk transfers have long been an integral part of the business model. Fannie Mae uses loss-sharing through its delegated underwriting system, while Freddie Mac uses a capital markets execution. These models have been highly successful, as confirmed by the performance of the GSEs' multifamily portfolio through the crisis. The FHFA is not requiring any changes to the multifamily credit risk transfer process at the present time. However, the 2014 Strategic Plan makes it clear that the "FHFA will explore whether transfers of additional risk can be achieved within the Enterprises' multifamily business models by evaluating whether private capital is willing to share additional credit risk for multifamily and at what cost....The FHFA will review the results of this analysis and will consult stakeholders to determine whether FHFA should consider making changes in Fannie Mae's and Freddie Mac's multifamily credit risk transfer models."<sup>ii</sup>

#### **Shrinking the GSE portfolios**

Prior to the crisis the GSEs had both accumulated large portfolios of mortgage-backed securities and mortgages, which were funded by unsecured debt. These portfolios were not necessary for the smooth functioning of the mortgage-backed securities market, but were rather used for income generation. In fact, these portfolios generated well over two thirds of the GSEs' profits in the 2004–2006 period, and highlighted how the GSEs' implicit government backing conferred unfair advantages such as a lower cost of funds. Since the profits were privatized and the losses were socialized, the GSEs were incented to build up large investment portfolios, which could be funded at wider margins than their competitors.

The first Senior Preferred Stock Purchase Agreement, in September, 2008, required the GSEs to wind down their portfolios at 10 percent per annum. The Senior Preferred Stock Purchase Agreement, as amended in 2012, required the GSEs to reduce their retained portfolios at an annual rate of 15 percent, until each portfolio reached a target level of \$250 billion, which could occur no later than December 31, 2018. As of March 2015, Fannie's portfolio stood at \$411.7 billion, while Freddie's portfolio stood at \$405.6 billion. This combined total of \$812.3 trillion is less than half of the 2008 peak of \$1.65 trillion, and most of the way to the combined target of \$500 billion. The FHFA is also directing the GSEs to reduce taxpayer risk by selling less liquid assets in an economically sensible manner.

### **The Common Securitization Platform and the Single Security**

FHFA has been working with the GSEs to develop a Common Securitization Platform (CSP) infrastructure and improve the liquidity of the GSEs' securities through the development of a single common security. The CSP would focus first on supporting the existing GSE single family securitization activities; after almost seven years in conservatorship, both GSEs have systems that have been patched numerous times and need an overhaul. To create a single security, which will improve liquidity, the two GSEs must use the same systems. The CSP is a huge piece of software, requiring work on five distinct modules: data validation, issuance support, disclosure, master servicing operations, and bond administration.

The single common security is designed to reduce the disparity in value between Fannie and Freddie securities. Currently Fannie securities trade more successfully than Freddie's due to higher liquidity. As a result, Freddie Mac "makes up" part of this differential, essentially providing a rebate of guarantee fees to its lenders, in order to attract business, to the detriment of taxpayers. The FHFA has proposed a structure in which the securities are standardized with the same delay (that currently used by Fannie Mae) and the same disclosures (that currently used by Freddie Mac), essentially incorporating the best features of each security.<sup>iii</sup> Fannie Mae would continue to issue Fannie securities, Freddie Mac would continue to issue Freddie securities, both using the standardized structure. Under the proposal, Fannie securities would be deliverable into Freddie's Giant Pools and Freddie's securities would be deliverable into Fannie's Mega Pools. This should eliminate the value disparity, because if Freddie securities sell "too cheap", market participants will opt to deliver Freddie Mac securities into Fannie's Megs.<sup>iv</sup>

### **What else should be done administratively?**

There are two additional steps that FHFA can and should take to improve upon the system we have today and offer more flexibility to reform the housing finance system in the future. First, they should direct the GSEs to gather more information on how the market would price risk. This includes both first-loss risk as well as the risk associated with different (credit score, loan-to-value ratio) buckets.

In a new or reconstituted system, the government would drop into the role of a re-insurer, insulated behind a great deal more private capital taking first loss risk. Yet, to date, we have precious little sense of how the market will handle that first loss risk. Freddie has completed a few structures this year in which the first loss risk is shared. Front-end risk sharing is by its nature a sharing of first loss risk, but there have been relatively few front-end risk sharing transactions. As a result, we simply don't know which structures will most benefit consumers, which will most benefit the market and which will show greatest returns to the GSEs.

In addition, we have no information on how the market would price (lower credit score, higher LTV loans). This is critical information: if private capital was to be placed in a first loss position, the design of the system might well depend, in part, on whether and how much cross subsidization was required. In the STACR and CAS deals, there is segmentation by loan-to-value ranges, but these loans are not further segmented by credit score. It would be helpful for the FHFA to explicitly direct the GSEs to experiment with structures that provide for this price discovery, so that when Congress re-engages again on long term reform, no one need guess about these critical questions.

Second, the FHFA should make clear that the end objective of the development of the securitization platform is not an agency-only platform, which would only further entrench the duopoly. It is important to take care of the present system first, but it should be clear that the end objective should be a platform which is designed to be open to other market participants. This will reduce rather than heighten barriers to entry for an expanded set of participants.

#### **Which reforms require legislative action?**

While dramatic steps have been taken on the administrative side to move toward a more permanent housing finance system, administrative reforms, even if they continue, cannot take the final steps. In particular, the GSEs cannot be taken out of conservatorship and recapitalized without legislation. They cannot be replaced without legislation. There cannot be new competitors without a new housing finance system, which requires legislation.

Some have asserted that the administration could simply change the PSPAs to stop requiring dividends and let the institutions rebuild capital, after which the institutions could be sold to private investors.<sup>v</sup> Others have argued this is not so easy in practice.<sup>vi</sup>

Even if the GSEs were able to rebuild capital it would take them many years to build a level of capital acceptable to support their book of business.<sup>vii</sup> Moreover, it is not clear how viable the GSEs would be if they exit conservatorship without a government guarantee. Without a government guarantee, existing GSE paper would have a full faith and credit guarantee,<sup>viii</sup> while new paper would not. It is not clear how well the housing finance market would function or how much mortgage interest rates would rise if securities backing loans sold to the GSEs lacked a catastrophic government guarantee.

If the GSEs were to exit with a government backstop, under the PSPAs, the taxpayer is owed a fee equal to the value of the backstop. A fee equal to the fair value of the Treasury's \$258 billion line of credit would be prohibitively high, particularly in combination with trying to build capital. Thus, as a practical matter, the GSEs cannot exit conservatorship with or without a guarantee absent legislation. Moreover, they cannot be replaced without legislation, and new entrants cannot enter without legislation.

## Conclusion

It is important that the CFPB create a hold-harmless period after the implementation of the TILA-RESPA Integrated Disclosures. The idea behind the rules was to enhance the consumer experience. Implementation without a grace period on liability until the industry is ready will do exactly the opposite.

But TRID is a minor operational issue in a world where the future of the housing finance system remains unresolved. And this is an issue that ultimately cannot move without Congressional action. The FHFA has been leading the GSEs down the path of administrative reform, accomplishing many of the goals that housing finance reform was meant to accomplish: preserve the 30-year fixed-rate mortgage, assure broad access to credit, and transfer the bulk of the risk to the private market. However, there are a number of items that administrative reform cannot accomplish. Administrative reform cannot take the GSEs out of conservatorship and recapitalize them or replace them or allow for more competitors. For that, we need Congressional action.

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<sup>i</sup> The 2014 Strategic Plan for the Conservatorships of Fannie Mae and Freddie Mac, Federal Housing Finance Agency (FHFA), May 13, 2014.

<sup>ii</sup> Ibid, page 14.

<sup>iii</sup> See the Request for Input, Proposed Single Security Structure, Federal Housing Finance Agency (FHFA), August 12, 2014.

<sup>iv</sup> See Laurie Goodman and Lewis Ranieri, "Charting the Course to a Single Security," Housing Finance Policy Center Commentary, Urban Institute, September 3, 2014.

<sup>v</sup> See Jim Millstein "Its Time for Administrative Reform to End the Conservatorships", *MetroTrends* (blog), Urban Institute, May 29, 2014.

<sup>vi</sup> See Jim Parrott, "Why the GSEs Need Congress to Exit Conservatorship", *MetroTrends* (blog), Urban Institute, May 29, 2014.

<sup>vii</sup> Lets look at the math. If the GSEs needed to accumulate a 4 percent capital requirement on \$4.2 trillion of assets, the GSEs would need \$168 billion of capital. Assuming steady state earnings of 30 bps on new single family production (after all expenses, losses, and the payroll tax surcharge), that is \$12.6 billion of net income. Assuming \$2.5 billion on their multifamily business, and \$7.5 billion on the portfolio (150 bps on a combined \$500 billion of portfolio holdings), that produces a net profit of \$22.6 billion between the two GSEs. Even if the Treasury dividend were zero, it would still take almost 7.5 years to accumulate the capital. At a more reasonable dividend, and actually paying back the outstanding obligation, it would take much longer.

<sup>viii</sup> Section 6.3 of the PSPAs prohibits any change that would compromise the interest of the agency MBS investor, so a full faith and credit guarantee, as essentially promised is essential. If the GSEs were to be recapitalized without a backstop, it would compromise liquidity. Does this compromise the interest of agency MBS investors? It is likely this would result in litigation, leaving the decision to the courts.

May 14, 2015

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**Testimony of**  
**Cindy Lowman**  
*On behalf of the*  
**American Bankers Association**  
*before the*  
**Subcommittee on Housing and Insurance**  
*of the*  
**Committee on Financial Services**  
**United States House of Representatives**



May 14, 2015

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May 14, 2015

Chairman Luetkemeyer, Ranking Member Cleaver, my name is Cindy Lowman. I am President of United Bank Mortgage Corporation, part of United Bank of Michigan, a \$468 million asset community bank in Grand Rapids, Michigan. I also serve as the Chairman of the Mortgage Markets Committee of the American Bankers Association. I am pleased to be here today to testify on behalf of the ABA on concerns over the pending implementation of the Truth in Lending and Real Estate Settlement Procedures Act Integrated Disclosures, or TRID as this project has become known.

The ABA is the voice of the nation's \$14 trillion banking industry, which is composed of small, mid-size, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans.

The mortgage market comprises a substantial portion of the GDP in our economy and touches the lives of nearly every American household. TRID will impact every mortgage loan made in the United States and, thus, has a great potential impact on the housing-finance market. It is critical that this rule is implemented smoothly so that it does not end up hurting creditworthy Americans that want to own a home.

Although intended to simplify the disclosure process, if not implemented properly, TRID could add significant complications that end up costing consumers. TRID's objective of integrating consumer disclosures is worthwhile and commendable. TILA and RESPA both serve important purposes, but the disclosure regimes developed under each statute have swelled in complexity and volume to the point that borrowers are faced with so many documents to read, sign and initial that the process has become tedious at best and counterproductive at worst. The volume of documentation overwhelms the borrower and true disclosure has become virtually meaningless.



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ABA and a wide swath of industry and consumer groups have sought for years to streamline and simplify this process. Combined and simplified disclosures remained out of reach for many years due to the different focus of TILA and RESPA, and the fact that the two statutes were overseen by two different federal agencies: The Federal Reserve Board had jurisdiction over TILA and the Department of Housing and Urban Development had jurisdiction over RESPA.

The Consumer Financial Protection Bureau (Bureau), to its credit, undertook this project in an open and responsive process. The final integration rule, published in November of 2013, reflected many changes urged by the ABA and others in the industry during the comment process.

Nevertheless, we believe that opportunities were missed in the integration process. The new forms remain lengthy and intimidating to average consumers. The rules that lenders must follow are still confusing and difficult to apply. Given the scope and complexity of these new rules, the implementation of this regulation will impose high costs on all lenders and consumers.

These rules are scheduled to go into effect on August 1 this year. There are wide-reaching market implications and a tremendous amount of work banks must undertake to comply with these rules. Between now and then, banks must fully review all of the final rules; implement new systems, processes and forms; train staff; and test these changes for quality assurance before bringing them online. We must get this right, for the sake of our customers, our banks' reputations, and to promote the recovery of the housing market.

For some institutions, stopping any mortgage lending is the answer to this deadline because the consequences are too great if the implementation is not done correctly. At my bank, we are still waiting for systems from our third-party providers and do not expect some before the August 1 deadline. This means, that as of the deadline, I will be able to take mortgage applications, but will not be able to close any loans where I do not have systems in place.

In my testimony today I would like to make the following three points:

- A lot of work needs to be done to implement TRID,
- Consumers will be harmed if TRID is not implemented properly, and
- A delay of enforcement would minimize negative impacts on consumers.

The bottom line is that these new rules fail to achieve a simplified disclosure regime, and contain numerous ambiguities that raise compliance concerns for lenders and will lead to confusion and delays for borrowers if the rules are implemented as scheduled.

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There are very reasonable solutions that Congress envisioned that enable the Bureau to avoid the negative consequences of an arbitrary August 1 deadline. ABA strongly supports the efforts of Chairmen Luetkemeyer and Neugebauer in asking the Bureau to treat the time period between August 1, 2015, and December 31, 2015, as a hold harmless period for enforcement and liability under the new rules, and to formally announce such period to ensure that the prudential regulators and secondary market stakeholders do the same. ABA thanks Representatives Pearce and Sherman for introducing H.R. 2213, which provides for a hold harmless period. We urge quick action to avoid the potential harm to our mortgage customers.

#### **I. A Lot of Work Needs to be Done to Implement TRID**

Given the complexity and breadth of the market covered by these new rules, there is much work to be done before banks can be ready to implement them.

This regulation entails more than just two new disclosure forms. The new rules rework the entire disclosure infrastructure for residential mortgage transactions and dispense with 40 years of legal precedent. The complexity of the new rules, and the central role they will play in nearly every residential real estate transaction requires that lenders, their compliance software vendors, and other parties involved in the settlement process be given adequate time to ensure compliance and a smooth transition to the new regulatory regime. New processes will be required for every bank, and these processes must be tailored to each product type and each jurisdiction across every state.

We stress that there is currently no opportunity under these tight timeframes for stakeholders to adequately guarantee accuracy and properly guard against liability. The rule does not provide for a “test period” or other mechanism to ensure that the new rules and the compliance software, employee training and other settlement service providers are prepared for the new regime. As things stand, borrowers whose mortgage application is received by July 31 will be covered by the existing rules, and borrowers whose mortgage application was received on August 1 will be covered under the new rules. In addition to banks and lenders, many other parties are affected by this regulation including realtors, appraisers, title companies, settlement agents, software vendors and, most importantly, the consumer. Should any of these parties not be fully compliant on August 1, all other parties will suffer from a domino effect—with lenders bearing the brunt of the liability.

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Our most urgent concern right now is ensuring we have sufficient time to fully review final rules and other clarifications or policy statements still being issued by the Bureau; implement new systems, processes and forms; train staff; and test these changes for quality assurance before bringing them online.

Regulatory implementation is further complicated by the fact that most banks—and particularly smaller community banks—rely on vendors for regulatory compliance needs and the accompanying software updates and system upgrades. For purposes of the current TRID rule, an alarming number of banks report their vendors are not yet ready to provide the necessary updates to individual institutions.

An ABA survey found that an overwhelming 74% of banks are using a vendor or consultants to assist with TRID implementation; however, only 2% of the compliance systems had been delivered by the month of April (when the survey closed), and a startling 79% of our banks could not verify a precise delivery date, or were told that they would not receive systems before June. In fact, 21% of responding banks were explicitly informed by their vendor that their systems will not ready until well into June and even July.

Since 42% of those surveyed state that the compliance systems will be delivered “in stages,” it is reasonable to anticipate that the full set of software necessary for “full” implementation will not arrive in time for the deadline. **In fact, I have been informed by my vendor that parts of our third party systems will not be available until *after* the deadline.** Even when we do get these systems, banks must still implement the new processes and forms; train staff; and test these changes for quality assurance before bringing them online.

Additionally, about a quarter of the banks surveyed report that their vendors will not provide the necessary software for all the types of loans that banks plans to offer. This means that these lenders will have to create specialized processes for these loans, integrate another vendor into their platforms, or forego the specialized products altogether. The first two options will further delay compliance, and the third item is surely a loss for all consumers.

Simply put, there is no realistic way that those banks can adequately prepare for the current August 1 implementation. Banks that have not fully implemented by the deadline will have to curtail all mortgage lending until systems are in place, delivering a heavy blow to the mortgage market at a crucial time of the year.

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## **II. Consumers Will be Harmed if TRID is Not Implemented Properly**

It is important to note that while the TRID effort is intended to assist borrowers by making the disclosure regime clearer and more meaningful, those improvements, if they are achieved, still come at a cost to all parties involved in a covered real estate transaction, including consumers. If the rules are not well crafted, and the implementation is not well structured, those costs will increase as changes in rules or processes are required. All parties, but especially the Bureau should seek to avoid unnecessary problems at the outset to minimize these added costs.

### **Costs Will Fall on Consumers**

With added regulatory complexities come added problems. Since many lenders will not have a chance to test their systems prior to August 1, lenders will be more susceptible to problems which ultimately will fall on the consumer. For example, the rule is explicit about the three day settlement procedure. Should anything go awry, then the settlement will have to be delayed. A delay in settlement could be a huge imposition to a buyer. In more cases than not, the buyer planned a whole schedule around an expected settlement date, which likely involves moving homes and finalizing the sale of their current home. Having to push back the settlement date often has large costs to consumers. It can lead to rate lock expirations, missed deadlines in back-to-back settlements, or in some cases could even lead to cancellation of entire transactions. If these problems occur on a widespread basis, as some fear, the impact could be felt more broadly in the economy. In a housing market that is still struggling to recover from the financial crisis, this is a mistake that can and should be avoided.

### **Consumers are Already Protected**

The existing rules, complex and voluminous as they are, do protect borrowers. On the other hand, rushing to implement new rules can and almost certainly will lead to circumstances that will at least inconvenience borrowers, but in actuality could likely be much worse.

If adequately structured, borrowers will not be harmed by a delay in enforcement or even in implementation of the new rules. The new integrated disclosures, imperfect as they are, may improve certain disclosure elements for borrowers, but they are not crucial to providing adequate protections for borrowers who already receive full disclosures and protections under existing rules.

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Rushed implementation will not add to these protections and may indeed be harmful to borrowers if the process does not go smoothly.

#### August is the Busiest Time of the Year in Housing Markets

As Congressmen Luetkemeyer and Neugebauer first pointed out, “August is one of the busiest months for home closing as many homebuyers look to move into their new homes before the start of the school year.” As outlined in the table to the right, we highlight the top 25 busiest days for existing homes sales closings. As

Rank	Closing Date	Rank	Closing Date
1	Monday, June 30, 2014	14	Friday, June 20, 2014
2	Friday, May 30, 2014	15	Friday, November 14, 2014
3	Friday, August 29, 2014	16	Friday, November 21, 2014
4	Wednesday, April 30, 2014	17	Friday, September 26, 2014
5	Thursday, July 31, 2014	18	Thursday, October 30, 2014
6	Tuesday, September 30, 2014	19	Friday, July 25, 2014
7	Friday, February 28, 2014	20	Friday, May 23, 2014
8	Friday, June 27, 2014	21	Friday, December 20, 2013
9	Friday, October 31, 2014	22	Friday, April 25, 2014
10	Friday, August 15, 2014	23	Friday, August 22, 2014
11	Monday, March 31, 2014	24	Friday, July 18, 2014
12	Friday, March 28, 2014	25	Wednesday, July 30, 2014
13	Friday, January 31, 2014		

highlighted, 7 of those days fell in the months of August, September and October. Conversely, January – the desired date to start enforcing a penalty for non-compliance – had 11 of the slowest days for home closings. Since August, September and October are the busiest months of year for the residential mortgage industry, it seems unnecessary to add such an arduous compliance change into the mix. We constantly hear complaints about problems arising for lenders due to the increase of regulation and the complex examination process from our members. TRID only adds to that level of concern. Come August, lenders should be ensuring they are providing the best quality care for the consumer during the industry’s busiest season. They should not be concerned with the unnecessary burden of properly functioning software systems which is why a delay option seems to be the best solution for all parties involved.

### III. A Delay of Enforcement Would Minimize Negative Impacts on Consumers

ABA strongly supports the efforts of Chairmen Luetkemeyer and Neugebauer in asking the Bureau to treat the time period between August 1, 2015, and December 31, 2015, as a hold harmless period for enforcement and liability under the new rules, and to formally announce such period to ensure that the prudential regulators and secondary market stakeholders do the same. ABA thanks Representatives Pearce and Sherman for introducing H.R. 2213, which provides for a hold harmless period.

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We stress the importance of keeping all the prudential regulators including the Federal Reserve, FDIC and OCC fully informed of this change to ensure no repercussions for banks undergoing their examination process by their primary regulator. We would also urge the Bureau to coordinate with the state Attorneys General on any restrained enforcement, as the TRID rules do allow for private rights of action.

#### **Congress Did Not Set This Deadline, and Intended a Trial Program**

Congress anticipated the challenges associated with new implementations and provided solutions in the Dodd-Frank Act. While the TRID effort was mandated by Congress to improve the settlement process for consumers, it was notably not intended to correct deficiencies or consumer protection gaps in the existing rules. It is also notable that Congress did not mandate a deadline for implementation of new rules, clearly demonstrating that there was no urgency to action. In fact, Section 1032(e) of the Dodd-Frank legislation specifically allows for a disclosure “trial program”, for the express purpose of providing test disclosures to consumers that are designed to improve upon any model mortgage form proposed under these provisions. Congress wisely identified that the Bureau ought to protect lenders by creating safe harbor standards and procedures that should be designed to encourage covered persons to conduct trial disclosure programs. The clear message from Congress in this regard is that it is better for the Bureau to adequately test new forms and take the time to get the new rules right, rather than to rush to an imperfect or flawed new regime. The Congressionally-sanctioned trial program would be a sensible approach to resolve the critical compliance quandary that lenders are now facing.

#### **We Need to Get This Right the First Time**

Changes to rules are not cost-free for any parties involved in a covered transaction. Some have argued that if the new rules are not sufficient or need clarification, then the Bureau can simply engage in further rulemaking. We appreciate the Bureau’s efforts to clarify these rules to date, but it must be recognized that each change to a rule imposes high costs on lenders and other settlement service providers. These new rules impose sequential steps that lenders must follow for purposes of compliance, so rule changes require alterations to software and additional training that amount to significant expenditures of money and resources. Those costs, unavoidably, are passed on to the

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borrower. If the Bureau does not get this complex rule right the first time, borrowers will suffer in the long term.

#### **There is Precedent for Delayed Enforcement**

We note that there is precedent for a restrained enforcement period. In November 2009, the Department of Housing and Urban Development (HUD) announced a period of “restraint” in enforcing the RESPA rule. Similar to that of 2009, this restraint will be in the best interest of the consumer. The consumer purchasing or refinancing a home should not be burdened by complex rules and forms that have not been tested under real-life conditions while the industry navigates through these difficult regulations.

#### **Conclusion**

These new rules affect the entire mortgage-lending industry, including lenders, service providers, appraisers, escrow agents, and virtually anyone with a relationship to the mortgage lending process. The new rules will significantly reshape the housing-finance market, which comprises a substantial proportion of our country’s gross domestic product and touches the lives of nearly every American household. If we do not get this right it will have a negative impact on consumers, banks, and the recovery of the housing market.

Given the potential for problems—which can easily be avoided—the ABA strongly encourages the Bureau to institute an enforcement and liability delay for those who demonstrate best efforts to come into compliance with the new rules. Some parties have referred to it as a “hold harmless” period and others are calling it a “grace period.” The terminology is unimportant; what is important is to move forward with all due haste to implement some specific and clear delay of enforcement.

ABA thanks Representatives Pearce and Sherman for introducing H.R. 2213, which would provides for just such a hold harmless period. The voices of Congress, including Chairmen Luetkemeyer and Neugebauer and others, are critical to supporting a reasonable and thoughtful change to help homebuyers in our country.

Since this August 1 implementation date was not Congressionally mandated, ABA sees no reason why the Bureau cannot enact a delay of enforcement and liability for entities that can engage in best efforts at compliance, or, if that becomes too complex, a full delay in implementation to

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January 1, 2016. The “trial program” authorized by Congress would be a well-tailored approach to ensure that compliance efforts continue under safe legal conditions that do not impose unfair liability on banks.

Thank you for considering the views of the ABA. We look forward to working with the Committee on this important issue and to answering any questions you may have.





500 New Jersey Avenue, N.W.  
Washington, DC 20001-2020

Chris Polychron  
2015 President

Dale A. Stinton  
Chief Executive Officer

GOVERNMENT AFFAIRS

Jerry Giovanello, Senior Vice President  
Gary Weaver, Vice President  
Joe Ventrone, Vice President  
Scott Reiter, Vice President  
Jamie Gregory, Deputy Chief Lobbyist

**TESTIMONY OF**  
**CHRIS POLYCHRON**  
**2015 PRESIDENT**  
**NATIONAL ASSOCIATION OF REALTORS®**

**BEFORE THE**  
**U.S. HOUSE FINANCIAL SERVICES COMMITTEE**  
**SUBCOMMITTEE ON HOUSING AND INSURANCE**

**HEARING TITLED**  
**TILA-RESPA INTEGRATED DISCLOSURES: EXAMINING THE**  
**COSTS AND BENEFITS OF CHANGES TO THE REAL ESTATE**  
**SETTLEMENT PROCESS**

**MAY 14, 2015**

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## INTRODUCTION

Thank you for the opportunity to testify today. My name is Chris Polychron. I am the 2015 President of the National Association of REALTORS® (NAR). A REALTOR® for 27 years, I am an executive broker with 1st Choice Realty in Hot Springs, specializing in residential and commercial brokerage.

NAR has long supported reduced paperwork and better disclosures in real estate transactions where appropriate. NAR provided numerous comments to various efforts by the Department of Housing and Urban Development to reform RESPA culminating in the 2010 changes to the Good Faith Estimate and HUD-1 Settlement Statement. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act went a step further and specifically required the Consumer Financial Protection Bureau (CFPB) propose a rule to combine RESPA disclosures with Truth in Lending Act disclosures. CFPB did so in July of 2012 and finalized the rule in November of 2013. That rule takes effect this summer.

On August 1, 2015, the resulting significant RESPA-TILA changes will go into effect. There will no longer be Good Faith Estimates (GFEs) or Truth in Lending disclosures. Those two disclosure forms have been combined into a single "Loan Estimate" or "LE." Likewise, the HUD-1 Settlement Statement has been combined with the final Truth in Lending disclosure to form the "Closing Disclosure" or "CD." While NAR is generally supportive of this harmonization as long as it benefits consumers and makes the transaction smoother, we believe there will be growing pains in the implementation of this extensive rule. With this in mind, the Association has urged the CFPB to provide for a restrained enforcement and liability period for the RESPA-TILA integration regulation, asked them to clarify TILA and RESPA liabilities under the regulation, and provide additional written guidance and clarity on a number of issues.

Over the last several months, NAR has been conducting webinars and education sessions, as well as participating in several industry forums, to educate real estate professionals on the upcoming RESPA/TILA integration. Through this outreach, it has become clear that the RESPA/TILA integration will be a learning experience for everyone, and there is potential for problems in closing transactions that will negatively impact consumers.

## DELAYS AND THE CLOSING DISCLOSURE

First, there is potential for disruption as lenders figure out what will and will not require a new 3-day waiting period for the new CD. Under the rule, the CD must be provided to the buyer at a minimum three days before closing. If there is a major change to the loan terms, such as a change from a fixed rate to an adjustable rate or the APR increases or decreases by one eighth of a percent or more, a new CD must be issued and a new 3 day period commenced. Originally, the CFPB proposed that any change of \$100 or more would require a new three day period. Understanding the magnitude of the delays that this would result in, NAR opposed that and the CFPB altered their proposal to require a new waiting period in far fewer circumstances. NAR also supported a broad consumer waiver. However, while the three day period can be waived, it can only be waived for a "bona fide financial emergency." While this sounds reasonable on its face, it is extremely limited (according to CFPB's existing guidance) to items such as an imminent bankruptcy and not to situations such as increased consumer costs or lost downpayments. (Downpayments can be as much as 10% or more than \$20,000 for a median priced home in today's market.) So it is conceivable that a borrower even could see their interest rate drop and still be forced to wait days to close the transaction incurring perhaps significant costs in daily interest, hotel charges, storage fees, or extra moving truck rental days to name a few.

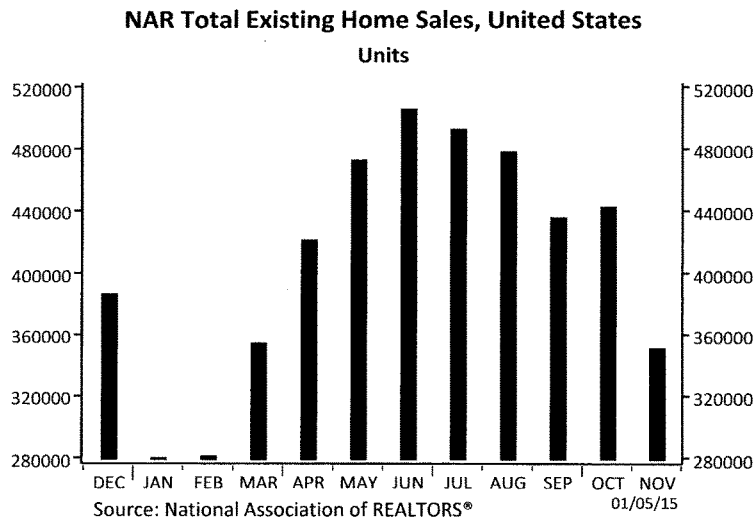
Another concern is that while the CFPB limited the requirement for issuing a new CD and requiring a new three day period, CFPB made the lender ultimately responsible for the CD and its contents. This has led to many lenders adding a requirement that any changes to the CD be approved by the lender. The problem arises because in many instances, the ultimate lender is not present at the closing. Therefore, an approval will

need to be sought from the lender who may be in a different time zone and/or thousands of miles away causing significant delays though not necessarily a three day delay. It is easy to see a scenario where an afternoon closing is carried over to the next day and a related closing in the chain of transactions that are commonly associated with a property's sale postponed as well. Needless to say, this entire scenario could cost many parties significant time and money, as well as causing serious frustration.

#### RESTRAINED ENFORCEMENT/TRIAL IMPLEMENTATION PERIOD

NAR is advising its members and other industry partners to avoid last minute changes wherever possible. Nevertheless, real estate transactions are complicated with many moving parts. For most people, it is the most complicated transaction they will be involved with in their lives and, of course if not the most, one of the most significant financial commitments. In such a significant and detailed transaction, last minute changes may sometimes be unavoidable. However, no one can know for sure the degree to which this new rule will increase the number of delays until the rule takes effect and is implemented. For this reason, NAR is advocating that the CFPB make the period August 1, 2015 to December 31, 2015 a restrained enforcement and liability period. During this period, industry would operate under the rule and use the new disclosure forms but be held harmless in terms of liability if acting in good faith. The industry and the CFPB can then collect data on problems and develop solutions to minimize costly and harmful impact on consumers.

This five month break-in or beta testing period should provide enough time to collect data, identify unintended consequences, and make the necessary changes. It also has the benefit of moving the full-fledged implementation from some of the busiest months for closings to the least busy months of January and February, as evidenced in the following chart documenting just one component of transactions subject to the rule.



Even if only ten percent of transactions experience issues with the rule implementation, the numbers will be significant, perhaps more than 40,000 transactions a month but involving many more people and families

than that. The potential for disruption and negative consumer impact is significant. This is certainly something REALTORS®, the industry and consumers would like to avoid.

There is precedent for the CFPB to create a “break in” period for the rule. The Department of Housing & Urban Development (HUD) took a similar approach when it revised the RESPA disclosures in 2010. In that effort, HUD encouraged industry to provide feedback on the new disclosures by announcing it would not conduct enforcement actions against companies that tried to comply in good faith by following the rules’ interpretation. CFPB is granted significant power under Dodd-Frank and should be able to allow a trial implementation period that gives industry the appropriate assurances while ensuring the new forms are implemented starting August 1, 2015. It is worth noting that while Section 1032 of Dodd-Frank did require a proposed rule by July 21, 2012, it did not even propose an implementation date for these changes as it required for most of its other mortgage rules. Rather, the law cedes nearly complete authority to CFPB, while section 1032(e) also envisions the possibility of a trial period with a safe harbor:

**TRIAL DISCLOSURE PROGRAMS.—**

(1) **IN GENERAL.**—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) **SAFE HARBOR.**—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.<sup>1</sup>

Clearly, Congress intended to grant CFPB broad authority to test this rule before enforcement, and the CFPB should use this authority to ensure that the rule works effectively for consumers in practice.

### THE NEED FOR WRITTEN GUIDANCE

Written guidance is important for effective implementation of any regulation. NAR is generally supportive of efforts by the CFPB to provide additional guidance on any number of issues including RESPA and other regulatory issues outside the scope of this hearing. Without clarifications, practitioners can be hamstrung in their efforts to properly comply with new requirements. Here are some examples where additional written guidance can be helpful under the RESPA/TLA rule.

One issue is whether loan pre-approvals can still be done and how they relate to the LE under the rule. While CFPB’s verbal guidance has been positive and indicates that very little will change in the pre-approval process with regard to collecting and evaluating documentation, a written declaration that the pre-approval process is separate from the application process would have an added benefit. For example, the application trigger is for the issuance of a loan estimate and a loan estimate must be given when the critical six items are collected.<sup>2</sup>

<sup>1</sup> The Dodd Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Section 1032. July 21, 2010. <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>

<sup>2</sup> The six items are: (1) the consumer’s name, (2) the consumer’s income, (3) the consumer’s Social Security number to obtain a credit report (or other unique identifier if the consumer has no Social Security number), (4) the property address (5) An estimate of the value of the property, and (6) the mortgage loan amount sought. It is rare that when one asks for a pre-approval, they already know the property address. Pre-approvals tend to be a pre cursor to visiting properties.

But that does not mean that information other than those items cannot be voluntarily collected for purposes of issuing a pre-approval letter.

Additionally, in many states, there will be consumer confusion around the disclosure of owner's and lender's title insurance premiums referred to as "simultaneous issue." This may require significant additional explanation and even additional disclosures. It may also lead to borrowers not receiving the title insurance protection they want. The CFPB has made an effort to explain this issue in its home loan toolkit. It should go further and allow for disclosure consistent with state law and rules.

There are other issues where written guidance and additional changes could be helpful, reduce confusion and additional paperwork. Some of these include:

1. Clarifying whether real estate agents can receive copies of the closing disclosure directly from the lender in order to explain and advance the transaction with their clients.
2. Ensuring that consumers can still choose the agent that closes their transaction without lender interference the same way one chooses their lawyer to represent them and not their opponent.
3. Providing more information and flexibility on "bona fide financial emergency" and waivers.
4. Requiring re-disclosure and a new three day waiting period only when the APR increases.

These are but a few questions CFPB could and should answer or provide additional guidance in order to ensure a smooth implementation of the TRID rule.

When HUD implemented RESPA reform in 2010, it also issued 400 questions and answers to explain the rule. Industry had hoped that would be unnecessary with the new RESPA/TILA rule, but it appears more written guidance is not only unavoidable but would be a great benefit. CFPB staff has been helpful in providing oral guidance and attending and participating in industry education events. However, the litigious climate that has consumed the lending industry in the wake of the most recent crisis has made industry participants (and more specifically their counsels and risk managers) extremely cautious. While oral guidance may be put one's mind somewhat at ease, written guidance may be necessary for a practice or procedure to be approved more universally and consistently. Therefore, NAR has urged the CFPB to ensure lingering questions get answered so consumers only benefit from these new rules and disclosures.

#### **LIABILITY CLARIFICATION**

Similar to the need for written guidance is the need for assurance of which type of liability applies to the documents and the rule. RESPA and TILA have different liability standards with TILA standards being generally more stringent including private right of action. Given that the rule relies heavily on TILA's statutory authority, lenders are being cautious and essentially assuming that TILA liability applies to everything. NAR believes that the CFPB could provide more flexible by defining what liability standard applies to the various elements, i.e. assigning TILA liability to TILA elements and RESPA liability to RESPA elements. Doing so would likely make lenders more willing to be flexible at the closing table for changes not closely or directly related to the loan. This may abrogate the need for time-consuming centralized approval of changes to the CD.

#### **CONCLUSION**

RESPA/TILA integration is a monumental effort that truly was decades in the making. The CFPB has done good work in this effort but there is more work that needs to be done to ensure these changes are effective and meet the needs and expectations of consumers. NAR will continue to work with the CFPB and our industry partners in this effort. Thank you for allowing me to share the views of the National Association of REALTORS®, and we look forward to working with you as well.



*Habitat. We build.*

May 14, 2015

The Honorable Blaine Luetkemeyer  
Chairman  
Subcommittee on Housing and Insurance  
United States House of Representatives  
Washington, DC 20515

The Honorable Emanuel Cleaver  
Ranking Member  
Subcommittee on Housing and Insurance  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Luetkemeyer and Ranking Member Cleaver:

Thank you for convening today's hearing addressing new mortgage disclosure requirements implementing the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). Ensuring that Habitat for Humanity partner families fully understand the structure and costs of their mortgages before undertaking them has long been a priority of Habitat affiliates and key to Habitat homeowners' 40-year record of success. Habitat strongly supports efforts to consolidate and simplify mortgage disclosures, but in light of ongoing challenges in accessing the necessary technologies to meet the new requirements, Habitat urges the committee to provide additional time for small and nonprofit lenders to achieve compliance.

Habitat for Humanity's vision is a world where everyone has a decent place to live. Anchored by the conviction that housing provides a path out of poverty, Habitat has helped more than 5 million people since 1976 through home construction, rehabilitation and repairs, and by increasing access to improved shelter through products and services. Habitat also advocates to improve access to decent and affordable shelter and offers a variety of housing support services that enable families with limited means to make needed improvements on their homes as their time and resources allow. As a nonprofit Christian housing organization, Habitat works in more than 70 countries and has more than 1,400 local affiliates here in the United States.

Despite the wide use of automated disclosure tools by private mortgage lenders, most of Habitat's more than 1,400 US affiliates have not historically had access to automated disclosure systems, so they have prepared the disclosures by hand. In spite of affiliates' best efforts over the last 18 months, the time required to acquire, tailor, and install software and to train staff to use it will render it impossible for the vast majority of Habitat affiliates to comply by the August 1st compliance deadline.

Because many Habitat affiliates will be unable to acquire access to the necessary technology by the deadline, Habitat supports H.R. 2213 to enable good faith compliance

GOVERNMENT RELATIONS AND ADVOCACY OFFICE: 1424 K Street NW, Suite 600 Washington, DC 20005

ADMINISTRATIVE HEADQUARTERS: 270 Peachtree St. NW, Suite 1300, Atlanta, GA 30303-1263 USA

INTERNATIONAL HEADQUARTERS: office 322 W. Lamar St., Americus, GA 31709, mail 121 Habitat St., Americus, GA 31709-3496 USA  
229-924-6935 toll free 800-422-4828 fax 229-928-8811 habitat.org



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efforts to continue through December 2015 without the risk of enforcement actions. Habitat greatly appreciates the work of Congressman Pearce and Congressman Sherman in developing and sponsoring this important bill.

Habitat strongly believes the new integrated disclosure requirements are well intended, seeking to provide consumers with a better understanding of mortgage offers and an improved ability to compare offers and choose the most appropriate loan. While zero-interest Habitat mortgage cost estimates are simpler than for profit, interest bearing loans, their unique structure plus the fact that Habitat loans are not subject to some qualified mortgage requirements reflected in disclosure software render it more difficult and potentially more expensive to modify available software platforms to fit Habitat loans.

Habitat homes are typically sold to partner families for significantly less than the cost of construction and the appraised value of the home. Further, Habitat partner families do not have access to comparable mortgages through banks and mortgage brokers. For these reasons, higher compliance costs for Habitat affiliates will reduce access to Habitat loans without serving the underlying purposes of the integrated disclosure approach. Habitat affiliates are, nonetheless, committed to full compliance and are hopeful that additional time will be provided to enable them to fulfill this commitment.

Because enforcing the integrated disclosure requirements on August 1st will require most Habitat affiliates either to acquire expensive technology, or to stop their lending activities altogether until reasonably priced software becomes available, resulting in fewer families becoming Habitat homeowners, Habitat strongly supports H.R. 2213 and urges the subcommittee to report this legislation for full committee consideration at its earliest opportunity.

Thank you again for convening this hearing and for your consideration of Habitat for Humanity's concerns. Please do not hesitate to call on me if Habitat may provide any additional information to assist the committee's work.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Ptomey".

Christopher Ptomey  
Director, Government Relations  
Habitat for Humanity International

GOVERNMENT RELATIONS AND ADVOCACY OFFICE: 1424 K Street NW, Suite 609 Washington, DC 20005

ADMINISTRATIVE HEADQUARTERS: 270 Peachtree St. NW, Suite 1300, Atlanta, GA 30303-1263 USA

INTERNATIONAL HEADQUARTERS: office 322 W. Lamar St., Americus, GA 31709; mail 121 Habitat St., Americus, GA 31709-3496 USA  
229-924-6935 toll free 800-422-4828 fax 229-928-8811 [habitat.org](http://habitat.org)

May 14, 2015



## Grace period needed to avoid market disruption during implementation of TRID rule

On behalf of the more than 6,000 community banks represented by ICBA, thank you for convening today's hearing on "TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process." We appreciate your focus on the implementation challenges of a uniquely complex, untested new rule with the potential to disrupt the residential real estate market. ICBA is pleased to take this opportunity to submit the following statement for the record, which advocates for a period of "restrained enforcement and liability" or "grace period" following the August 1 implementation date.

The TILA-RESPA Integrated Disclosure (TRID) rule is a comprehensive rewrite of the consumer disclosures associated with the financing of a home purchase. Implementation of the rule, which runs 1,888 pages, requires extensive systems reprogramming and staff training. We appreciate the CFPB's support through webinars, compliance guides, and participation in industry educational efforts. However, as with any new rule of this magnitude and complexity, until it goes "live" on August 1 and stakeholders have experience using the new forms and processes, it will be impossible for community banks and other stakeholders to identify problems and craft and implement solutions. This is particularly true because there is no opportunity under the new rule to comply early, testing systems in real time and under real circumstances.

Compounding this difficulty, covered loans originated before August 1 will need to follow the old rules and forms through loan closing. This means that lenders and other stakeholders will have to comply with two overlapping sets of rules, each with their own forms and processes, creating an environment ripe for human error. For this reason, ICBA has joined other stakeholders in asking the CFPB for a period of "restrained enforcement and liability" or "grace period" for those seeking to comply in good faith with the new rule from its date of implementation to the end of 2015.

In particular, ICBA is concerned about situations not addressed by the rule, such as the deferral of a closing due to factors outside of the control of the parties to a transaction such as a last minute property inspection to verify certain repairs have been made, which is not an unusual occurrence. In addition, uncertainty remains regarding the scope and effect of RESPA's and TILA's liability provisions given the integration of the two sets of disclosures. The result is that industry must assume the more stringent liability will apply in every circumstance even if this is not the intent of the law or the CFPB. Clarification in this area will avoid undue confusion, frustration, and costs for consumers.

In an environment of regulatory transition and uncertainty, lenders are cautious about approving new mortgage applications even for highly qualified borrowers. This was true during the implementation of the qualified mortgage, or QM, rule and the new mortgage servicing rules. Community bankers and other lenders have been very conservative in making loans for fear of making an error that would later be raised during an examination. Implementation of the TRID rule without the benefit of a grace period will likely result in homebuyers having less flexibility to buy and close on a home on their terms. An abrupt transition to the new rule has the potential to disrupt the residential real estate market just as it has begun to strengthen. This is a wholly avoidable setback that the American economy does not need.

*One Mission. Community Banks.®*



There is precedent for a restraint enforcement period. In 2010, following a revision of the RESPA disclosures, the Department of Housing and Urban Development (HUD) announced that it would not conduct enforcement actions against companies that attempted to comply in good faith. During the period, HUD encouraged industry feedback on the new disclosures. Because HUD's approach was highly constructive and helped to ensure a smooth transition to the new disclosures, ICBA encourages the CFPB to restrain both enforcement and liability during a grace period. Liability poses an equivalent or even greater risk to stakeholders in real estate transactions than enforcement.

**H.R. 2213**

ICBA strongly supports H.R. 2213, introduced by Representatives Steve Pearce and Brad Sherman, which would provide a safe harbor from enforcement of the new rules and shield all parties from suits for violation of the new rule until January 1, 2016 provided they have made a good faith effort to comply. ICBA encourages members of this committee to cosponsor and pass H.R. 2213.

Thank you for the opportunity to submit this statement for the record.

Written Statement of William F. Kidwell, Jr.

President – IMPACT Mortgage Management Advocacy and Advisory Group, Inc. (IMMAAG)

**“TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process”**

Hearing before the House Financial Services Committee

Subcommittee on Housing and Insurance

Thursday, May 14, 2015

Chairman Luetkemeyer, Ranking Member Cleaver and Members of the Subcommittee, I appreciate the opportunity to provide my written statement. My comments express the opinions of many of the thousands of state licensed mortgage loan originators sponsored by small originator companies around the country.

Since the witness panel does not include representation from the group of small mortgage originator shops that are the focus of **IMMAAG**'s<sup>1</sup> attention, the information shared in this statement is intended to add perspectives that otherwise would not be available to the subcommittee members.

The CFPB, in its final rule, cites from Section 1098 of the Dodd Frank Act, *“the purposes of the integrated disclosures set forth by Dodd-Frank Act sections 1098 and 1100A, as well as the Bureau’s mandate under Dodd-Frank Act section 1021(b) to ensure that consumers are provided with “understandable information” to enable them to make responsible decisions about financial transactions”* (78 FR 79743, December 31, 2013). As implemented it is unlikely that the purpose will be met. The balance of this statement explains why I have reached this conclusion. My statement explores:

1. 13,000 Companies - Ignored
2. Quantitative “Proof” - the TRID fails to deliver its stated purpose.
3. Consumer misinformation – and the CFPB refuses to change it.
4. Why a rush to implementation?

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<sup>1</sup> **IMMAAG** is a Colorado for-profit company founded in 2008. The company provides information and compliance assistance to several thousand state licensed originators. **IMMAAG** is the only company of its type that is focused solely on assisting the 13,000+ small, traditional mortgage companies sponsoring 1-10 Mortgage Loan Originators.

The intent of my written statement is to motivate the subcommittee to do more than consider the recently offered HR2213 which delays enforcement of the rule. **IMMAAG** asks the subcommittee to draft and support legislation that forces the CFPB to delay implementation, not just delay enforcement. Further, **IMMAAG** asks the subcommittee in such legislation to send the CFPB on a mission to construct real and fundamental change; change that was intended by The Dodd Frank Act. The Act provided the CFPB with the authority to go well beyond implementing incremental changes. Unfortunately, instead of flexing its regulatory muscle to create fundamental improvement, it is using its authority to launch an assault on the lowest hanging fruit of regulatory violations by punishing companies for violating aspects of RESPA that arguably produce little if any consumer harm, but are easy targets for a new agency to show “who is the boss”. Instead of using the skills and acumen of the incredible brain trust it has developed to develop ground breaking, 21<sup>st</sup> century solutions, the CFPB is producing reams of regulations which by their sheer volume fail to simplify, clarify or improve consumer information.

To continue the incremental track will not drive the desired benefits. It has taken 47 years and 41 years for TILA and RESPA, respectively to get where they are today. Continuing to patch the flat will not achieve everyone’s desired outcome. Only a true “do-over” will achieve that. Instead of the CFPB coming back in five years to report on the result of the patchwork quilt of regulations that have flowed from the Dodd Frank Act, direct the Bureau through legislation to engineer a collaborative solution that has a chance to protect consumers by empowering the thousands of professional serving those consumers to do so using the tools and skills they have participated in developing.

The Bureau applauds itself for its inclusive approach to rule making. Initially industry was encouraged by the rhetoric. However, actions speak louder than words and in the years following the agency’s honeymoon, it has become apparent that proposed rules are issued primarily to fulfill requirements of the Administrative Procedures Act. It is evident that the Bureau cares little about using feedback from the field to formulate its final policies. Further, the sheer volume of each of the proposals makes vetting and comment by thousands of small shops an impossibility. **IMMAAG** has been told directly by Bureau attorneys that mortgage brokers are clearly apathetic. The same staff has refused to accept that it is not apathy but lack of resources that prevents more commentary when rules are proposed. This “my way or the highway” approach rather than a truly inclusive probative approach is what seems to drive Bureau rulemaking. Such is the case with the final TRID rule. The Bureau will cite the depth and breadth of its research and polling, but viewed in the context of the response to the feedback, it is clear the Bureau knew what it wanted from the outset and asked for input for show; not go. As is detailed in this statement,

as recently as April 13, 2015 I was told by senior CFPB mortgage staff that in spite of recognizing issues with the content of the TRID, the Bureau will not change anything. I encourage every subcommittee member to reach out to constituent members of the mortgage industry and ask how open and responsive the CFPB is to their inquiries. Go beyond the few large institutions and ask the myriad small shops who actually represent the “feet on the street” that serve consumers in their communities every day. The exercise will be eye opening.

Now I will turn my attention to the four issues that I am asking the subcommittee to consider as it receives information about the “benefits” of the TRID.

#### **1. 13,000 Companies Ignored**

The recent “Great Recession” resulted in a frontal assault on the least culpable, but easiest target to blame for the mortgage component of the financial debacle. The Congress, regulators and self-proclaimed consumer advocates found an easy target. In spite of volumes of evidence to the contrary, “mortgage brokers” were: first, lumped into a single, misunderstood category; then attacked based on myth, agency misrepresentations and the clear inability of the affected companies to marshal an effective defense. This unjustified “blame-game” forced Congressional and regulatory attention on the wrong cause and effect. This resulted in the design of solutions that are almost guaranteed to fail to deliver the very consumer clarity and protection the Congress and regulators proclaim as the objective.

Repeated visits to Congress and the agencies, both The Federal Reserve Board and the Bureau of Consumer Financial Protection make it clear that the mortgage origination system is not well understood. The misunderstanding leads to volumes of regulation that miss the mark in terms of consumer protection and simplicity. Central to the problem is the idea that state licensed mortgage companies are a homogenous group. This could not be further from reality. As a result, instead of producing legislation that could remedy the problem; Congress sends the implementers on witch hunts that produce enforcement and not protection. Instead of focusing on fundamental change in antiquated statutes, specifically the Truth in Lending Act and the Real Estate Settlement Procedures Act; Title XIV of the Dodd Frank Act created a set of incremental changes that provided “work” for regulators but did (or will do) little to nothing to meet the objectives of TILA and RESPA to support informed decisions and manage consumer costs. On top of the list of misfires is the TRID activity.

In order to fulfill their purposes, TILA and RESPA need to be re-engineered, not amended. To the extent that the government feels it is the source of the skills to design change that will deliver the expressed desired results, it needs to orchestrate a “from scratch” re-do of the statutes that govern mortgage delivery. And, in doing so, it must insure that all segments of the system have a voice.

*Why is this background important to the subcommittee's questions about the TILA/RESPA Integrated Disclosures?* Because, during the development of the forms while the Bureau applauds itself in its 637 page rule for inclusion. The fact is, that input from a major subset of the industry was not truly considered. Rather, the CFPB would have Congress and the public believe that hiring a research firm, reluctantly complying with the requirement to convene a SBEFA panel and engaging 114 people in qualitative focus groups supplemented with 858 participants in a quantitative study produced compelling arguments supporting the forms that were developed.

The SBREFA panel empowered by the Bureau had only two traditional mortgage broker companies represented. That is interesting because, based on NMLS reported data (November 2014) there are 14,252 non-depository companies that sponsor one (1) or more mortgage loan originators. Of this population over 75% of the core of the mortgage distribution system is made up of companies with 3 or fewer MLO's.

7,150 (50.13%) sponsor 1;  
3,771 (26.44%) sponsor 2-3 and  
2,149 (15.07%) sponsor 4-10.

There are only 174 companies in the country that sponsor 101 or more MLO's.

This is an important fact because by ignoring the group of small shops in its rule development, the Bureau assures it does not receive meaningful feedback from the very originators that spend every business day working directly and locally with the very consumers the Bureau purports to protect. Why would the Bureau ignore this group? It should recognize that these companies should be cultivated as a tremendous source of “real” market feedback. But, instead of leveraging this community, the Bureau seems to either be unaware of the makeup of the industry or simply does not care about the information available from this resource. Whether it is the unjustified and disparate treatment in the QM/ATR Point and Fees rule or disregarding input that implored the Bureau to modify portions of the integrated disclosure, this core group of companies is generally ignored by the Bureau. The result is that with respect to TRID and other

regulatory change, consumers lose the benefit of input from the group of professionals that are most closely aligned with the daily processes that now confuse and complicate consumer decision making.

This group, even before the 2010 HUD GFE form changes encouraged the HUD before the CFPB to consider a simple addition to the previous HUD1 that would allow consumers to see the cost of their loan in a one page cash flow / breakeven supplement to the one page Good Faith Estimate. By using the recommended two pages at the very beginning of the process the consumer would have had, quantitative information on which to base a decisions. Yes, it would have required continued use of the TIL disclosure, but the same group frequently asked members of Congress to consider amendments to TILA that would have enabled a different, more useful approach for consumers to base decisions on. These pleas fell on deaf ears. Why? That is unclear; but over the past eight years it has become apparent that this small shop segment of the mortgage delivery system is largely invisible to both Congress and the regulators. Until the understanding of the delivery system is improved inside the beltway, laws and their implementing regulations will at best sub-optimize solutions and at worse provide negative consequences to consumers and industry.

## **2. Quantitative "Proof" - the TRID fails to deliver its stated purpose.**

The final TRID rule describes qualitative and quantitative testing conducted by Kleiman Communications Group. The tests were intended to establish the impact of the new forms compared to the forms being replaced.

From May 2011 to October 2011 Kleiman conducted a series of five rounds of qualitative testing of the Loan estimate, followed from November 2011 to March 2012 with five rounds of testing of the Closing Disclosure. These two series of tests involved a total of 114 people; 92 consumers and 22 industry representatives.

In March 2012, the SBREFA panel recommended that the Bureau conduct "live" in field tests of the forms. The Bureau (See 78 FR 79746, 12/31/2013) stated that, "*The length of time that would be necessary to develop and conduct such a study would be extensive.*" So, instead of taking industry's recommendation, the Bureau opted to utilize Kleiman to conduct "quantitative research". 858 people were selected for the quantitative testing of the old versus new forms. The quantitative tests resulted in a 338 page report on November 20, 2013. I am offering an excerpt from Appendix 1, Table 9 of this report.

The table below<sup>2</sup> summarizes the results of the 39 questions asked of the 858 participants across a spectrum of loan concepts identified by Kleiman. This summary is provided because it curious that, if the purpose of the integrated forms is to insure consumers are provided with understandable information, wouldn't it seem that the new forms should lead to a better rate of understanding than the improvements seen in this summary? Frankly, if our students brought home report cards with these results I suspect we might each be motivated to take some corrective action. Yet, the Bureau tells industry that the new forms will solve the problems, clarify, simplify and; whether industry is ready or not, implementation will occur August 1, 2015. My question is, if we continue to have 15% - 30% of the consumers confused by the nine loan concepts that are considered critical, what have we really done to achieve the Congressional purpose? Shouldn't we demand better?

Quantitative Testing Results -- based on 858 participants		
39 questions -- divided into 8 groups		
Participants -- ½ experienced, ½ not		
Compares current and proposed disclosures		
High Level Results: (Correct answer percentages)		
	Current	Proposed
Amortization (3 questions).	68.5%	76.1%
APR (2 questions)	74.4%	83.6%
Closing Costs/Settlement Charges (7 questions)	66.5%	72.9%
Escrow Account (4 questions)	63.4%	71.5%
Interest Rate (6 questions)	81.9%	86.6%
Loan Amount (6 questions)	44.4%	79.6%
Monthly Payment (9 questions)	46.1%	70.9%
Mortgage Insurance (2 questions)	32.7%	72.1%
Risk Factors (8 questions)	64.6%	76.0%

<sup>2</sup> Kleiman Communications Group - Know Before You Owe: Quantitative Study of the Current and Integrated TILA-RESPA Disclosures APPENDIX I. TABLE 9. Percentage of Respondents Answering Correctly with Current and Proposed Disclosures -- Grouped by Concept

**3. Consumer misinformation – and the CFPB refuses to change it.**

On April 13, 2015 I had the privilege of meeting with senior mortgage staff at one of the Washington D.C. offices of the Bureau. The purpose of the meeting was to discuss three subjects: 1) The Rate Checker tool added to the Bureau's website, 2) The unjustified treatment of the small, traditional mortgage broker companies by forcing the double count of fees in the new Qualified Mortgage tests and 3) Issues with and Questions about TRID.

I would welcome the chance to discuss both the Rate Checker and the disparate treatment of the QM double count with the subcommittee, but will defer that until another time. The discussion we had about TRID covered two important points:

- 1) First, we pointed out to the staff that the Loan Estimate and the Closing Disclosure, when considered with the marketing tools such as the recently released "*Your Home Loan Toolkit*" actually direct the consumer to compare loans based on incomplete information. Specifically, on page 10 the consumer is advised to compare Total Loan Costs. However, due to the design of both the Loan Estimate and the Closing Disclosure, total loan costs do not include rebates provided by lenders from the interest rate. Therefore, if consumers use the information contained in Box D of both forms they will not have the benefit of different credits that may exist between the creditors they are comparing.

When this issue was discussed with the CFPB staff, they acknowledged it as a problem, but stated very clearly there would be no changes to the forms. When we suggested that they at least change the marketing materials to direct the consumer to the Total Closing Costs, they likewise indicated no interest in making a change.

- 2) The discussion then shifted to issues related to settlement in general. In Colorado I am a member of a multi-disciplinary task force gathered to provide information to participants in the settlement process so that the TRID changes might be better understood and implemented with fewer problems. One of the key issues the group has spent time on is the fact that the Closing Disclosure is not a binding settlement statement and does not authorize the settlement agent to disburse funds. In fact, as designed, the Closing Disclosure, on its face advises the consumer, if they elect to sign the form, which is an option in the rule, they are only acknowledging receipt and are not obligated by the loan. The Bureau's response to input about this issue and the fact that there is tremendous industry



confusion only 100 days from implementation resulted in yet another rigid response rejecting any suggestion that more work needs to be done.

In no way can the existing Closing Disclosure fulfill the purpose of better understanding. And, I am fairly sure at least one panelist today will enhance on this issue because it is estimated that some 50% of Colorado purchase transactions have closings that are timed for the same day with one party dependent on the closing of another to complete their transaction. The proposed Closing Disclosure and the unwillingness of the Bureau to offer timely, bright line answers to industry requests for clarification will only impede the smooth transition to the new forms. The Bureau seems insensitive to the impact of its refusal to provide clear answers to questions that remain in spite of its Small Entity Guide. This can do nothing but harm rather than benefit consumers. It is further justification to have Congress intercede and delay implementation until the Bureau has answered industry's questions. Delayed enforcement will not squelch the negative consumer impact that will be caused by the Bureau's refusal to clarify. Every lender will make its best effort to comply which, absent clear and consistent interpretations, will lead to dozens of different approaches. This will serve confuse and complicate the closing process and to disserve and harm consumers as a result.

#### **4. Why a rush to implementation?**

I realize that it has been almost four years since the Bureau's authority became effective and the Bureau has been working on the TRID rule since 2011. So, it might be asked, how is a 2015 implementation of the change a "rush to implement".

In response, I can only offer that the simple passage of a few years does not constitute taking an appropriate amount of time to implement a sweeping change. Further, the Dodd Frank Act does not mandate when the rule is to be finalized. The Bureau acknowledges that in the final rule.

Unless it is not sharing the research results with the public, the Bureau has done little to evaluate how the existing TILA and RESPA disclosure contributed to the financial troubles the country has recently suffered and it certainly has not conveyed any research results that show how the form changes will either dramatically improve consumer understanding or how the new forms will head off future problems that drove the financial debacle. In fact, as I have pointed out in section two of this statement, the quantitative results suggest that almost a third of the questions about the new forms were incorrectly answered

indicating improvement from the existing forms, but hardly providing a compelling reason to do anything except go back to the drawing board and rethink the changes.


It is this refusal to take the extra time based on the real information at its hands that marks the Bureau's intent to be "getting another item off its deliverable list", at any cost and without regard to the effect on consumers or industry.

And, it is this approach that I hope the subcommittee will attempt to change by sending a legislative message to the Bureau that it must do better before it forces yet another massive change that will require fixing at the end of the five year period when the Bureau is required to review and report on the impact of its changes.

I wish to thank the subcommittee for allowing me to submit this statement. It is not meant to condemn the Bureau but rather point out several reasons why the result of TRID, as presently designed, will simply not benefit either consumers or industry and to ask the subcommittee to take a legislation action that can stop this runaway train before it leaves the station.

Thank you.

Sincerely,

  
William F. Kidwell, Jr. NMLS#174542



MORTGAGE BANKERS ASSOCIATION

**Statement of the  
Mortgage Bankers Association**

**Subcommittee on Housing and Insurance  
Committee on Financial Services  
U.S. House of Representatives**

**“TILA-RESPA Integrated Disclosure: Examining the Costs  
and Benefits of Changes to the Real Estate Settlement  
Process”**

**May 14, 2015**

Chairman Luetkemeyer and Ranking Member Cleaver, thank you for the opportunity to submit a statement for the record for your hearing titled "TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process."

The Mortgage Bankers Association (MBA)<sup>1</sup> represents mortgage lenders and servicers of all sizes and business models: from small independent mortgage bankers, community banks, and credit unions to the nation's largest financial institutions. MBA's members each play their own unique role in serving the mortgage financing needs of families across the country.

MBA member companies are spending countless hours and more than a billion dollars to implement the complex operational and systems changes to comply with the new rule by August 1, 2015. This is a massive undertaking that requires unprecedented coordination between disparate vendors (loan origination, document preparation, quality control) and across different industries (lending, title insurance, escrow companies, settlement attorneys, Realtors, etc.) to ensure that consumers' home purchase and refinance transactions can close on time. While the industry and vendors have made great progress, we believe an undertaking of this magnitude and complexity involves too many unknown contingencies that neither the Consumer Financial Protection Bureau (CFPB) nor the industry can anticipate. For this and other reasons, we urge that the rule be introduced with an enforcement "grace period," implemented by rule, to provide industry the flexibility to ensure consumer transactions are not adversely impacted, and to provide the Bureau time to fine tune the rule to address unforeseen contingencies.

Specifically, we have joined with other key stakeholders including other trade associations and advocacy groups in requesting that the CFPB establish a six-month "grace period" after the August 1, 2015, effective date for the rule, for enforcement and liability to ensure a smooth implementation. Additionally, we would like to highlight the need for clear, authoritative, written guidance from the CFPB to address questions that will arise when TRID takes effect.

The final rule, comprising 1,888 pages, is far more than a new set of forms – it is a wide-reaching new regulatory regime that changes the timing and requirements for the entire real estate settlement process, not just the mortgage transaction. Following the issuance of this rule, it has taken virtually all of the implementation period to discern the countless implementation questions it has raised and it has also taken most of that time for the CFPB to provide answers to some but not all of these questions.

MBA is grateful that the CFPB has participated in its conferences and forums focused on implementing the TRID rule. Nevertheless, notwithstanding its responsibility for TRID regulation, the Bureau has refused to offer authoritative guidance to address the myriad of important issues left unresolved by the final rule and commentary. CFPB staff have offered oral guidance at industry events and on webinars, but this oral guidance is always prefaced with a disclaimer that says that the information provided "does not represent legal interpretation, guidance, or advice

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

of the Bureau” and that it “does not bind the Bureau” or create any defenses that can be used in an enforcement proceeding.<sup>2</sup>

While MBA believes that rules and commentary with an opportunity for public comment must remain the primary means of implementing the myriad laws for which the CFPB is responsible, the agency’s refusal to also offer other authoritative written guidance in a timely manner – through FAQs or supervisory memoranda – as questions arise has slowed the process. Moreover, it has made lenders understandably concerned that implementation of the new disclosures will open them to new liability. The Bureau has indicated that other agencies’ issuance of FAQs, namely by HUD, in recent years was disruptive. Our members point out, however, that a body of reliable guidance would be far superior to the confusion created by this rule and the lack of authoritative guidance.

As the August 1 implementation date approaches, key questions remain unanswered. As examples, it remains unclear how a closing can be rescheduled without harm to the borrower or lender following an unforeseen circumstance. At the same time, other issues such as the rule’s very narrow waiver criteria should be revisited. And all of these issues arise against a backdrop of severe liability, which the Bureau has not defined.

Because of these and other concerns – including the finite bandwidth of technology providers facing countless changes – software and systems in many cases are arriving late, impeding the ability of lenders to comply. In fact, most lenders depend on technology vendors that, in turn, frequently depend on the work of other vendors. Even where lenders are ready, there is no opportunity under this rule to comply early, which means that the industry is unable to fully test systems – in real-time, under real circumstances – until after the August 1 effective date.

We would like to make it clear that we are not asking that the transition to the new forms be delayed. Under the circumstances, however, vigorous enforcement and litigation should not apply until after a reasonable grace period ends. Accordingly, and consistent with requests made by a bipartisan group of members of this very subcommittee, we are asking that the Bureau or, if necessary, Congress take action to establish a period until January 31, 2016, suspending enforcement and liability where those subject to the rule use the forms and make their best efforts to follow the rule.

A grace period would allow both stakeholders and the CFPB a much needed opportunity to identify friction points and for the Bureau to actively engage and address concerns authoritatively. The grace period should also apply to other federal and state enforcement.

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<sup>2</sup> From a Bureau PowerPoint presented on April 14, 2015, the disclaimer in full provides, “This presentation is current as of April 14, 2015. This presentation does not represent legal interpretation, guidance, or advice of the Bureau. While efforts have been made to ensure accuracy, this presentation is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding requirements. This document does not bind the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.”

While both enforcement and clear rules of the road protect consumers, having an orderly introduction of this wide reaching rule during some of the busiest months for closings will avoid undue harm to borrowers. Consumers who buy homes or refinance mortgages should not bear the burden of delayed closings or other harm as these rules and forms are implemented.

MBA commends the efforts of members of this subcommittee for holding this timely hearing. We look forward to working closely with this subcommittee and the CFPB to ensure the stated goal of the integrated disclosures effort helps consumers and does not impede their access to homeownership and needed mortgage credit.



3138 10th Street North  
Arlington, VA 22201-2149  
703.522.4770 | 800.336.4644  
F: 703.524.1082  
nafcu@nafcu.org

National Association of Federal Credit Unions | [www.nafcu.org](http://www.nafcu.org)

May 13, 2015

The Honorable Blaine Luetkemeyer  
Chairman  
Subcommittee on Housing and Insurance  
House Financial Services Committee  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Emanuel Cleaver  
Ranking Member  
Subcommittee on Housing and Insurance  
House Financial Services Committee  
United States House of Representatives  
Washington, D.C. 20515

**Re: Tomorrow's Hearing: "TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process"**

Dear Chairman Luetkemeyer and Ranking Member Cleaver:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, I write regarding tomorrow's subcommittee hearing entitled "TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process." We thank you for your attention to this important matter.

As you are aware, the CFPB issued a new TILA/RESPA rule in 2013 that combines the Good Faith Estimate and the initial Truth-in-Lending disclosure into the new Loan Estimate form. Among other things, the rule requires credit unions to completely restructure their technology systems and business processes in order to comply with a host of new disclosure and timing requirements.

NAFCU's member credit unions have been working tirelessly with their staffs and their vendors to navigate through the complex and voluminous TILA/RESPA rule. While NAFCU firmly believes that our members have taken the steps necessary to be in compliance as of the August 1, 2015, effective date, we are concerned that credit unions have been restricted in their ability to conclusively test their new platforms for strict compliance with the TILA/RESPA rule.

Because the CFPB has prohibited early compliance with the TILA/RESPA rule, credit unions are unable to efficiently and thoroughly test their new systems today. Instead, they are forced to operate two platforms - one that supports the current Good Faith Estimate and the initial Truth-in-Lending disclosure, and one that supports the new Loan Estimate form.

We are pleased that the National Credit Union Administration (NCUA) Chairman Debbie Matz announced to NAFCU earlier this year that the agency will consider credit unions' "good faith efforts toward substantial compliance" with the new TILA/RESPA rule for credit unions the agency examines. We believe such a policy should be implemented by the CFPB as well, which

is why we support legislation introduced by Representatives Steve Pearce and Brad Sherman, H.R. 2213, which would create a safe harbor of "good faith compliance" through December 31, 2015. We urge the committee to support this legislation.

Thank you for the opportunity to share our thoughts on this important issue for credit unions. If you have any questions or would like further information, please do not hesitate to contact me or NAFCU's Director of Legislative Affairs, Jillian Pevo, at (703) 842-2836 or [jpevo@nafcuhq.org](mailto:jpevo@nafcuhq.org)

Sincerely,

A handwritten signature in black ink, appearing to read "B. Thaler", written over a horizontal line.

Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the House Financial Services Subcommittee on Housing and Insurance



**Questions for the Record**

**Submitted to Ms. Diane Evans, American Land Title Association (ALTA)**

**“TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process”**

**Subcommittee on Housing and Insurance  
May 14, 2015**

I appreciate your participation in the Hearing on TILA-RESPA Integrated Disclosure. It takes years for families to save up to buy a house. When costs are inflated – which research shows they are in title insurance which is the largest cost outside of the mortgage – we make it more difficult for families to buy homes. This overpriced opaque market hurts our families, our communities and our economy.

**Question 1: Fair Process for home buyers**

Why would you consider it reasonable to expect a home buyer to sign documents not prepared and presented for review at least a couple days in advance?

If you know the closing is scheduled for weeks from now, why is it that everyone can only be ready just before the closing?

- Why can a title insurance agent not set her calendar for 3 days prior to the real closing date and use that as her need to be ready date?
- Why does ALTA suggest that only the home buyer must be flexible instead of the company changing to accommodate the customer?
- In the closing room, the realtor, banker and title agent are paid at closing. They are done. Yet the buyer lives with a 30-year mortgage and perhaps a lifetime in the house.
- Who deserves the most time to review documents?
- ALTA has asserted that consumer protection is afforded by ALTAs encouragement to its members to comply with all laws and regulations. What monitoring procedure is in place to affect such compliance?
- ALTA has asserted that consumer protection is afforded by ALTAs encouragement to its members to comply with all laws and regulations. What disciplinary procedure is in place respond to non compliance??

Response to Question 1

Thank you for the opportunity to respond to your questions. I appreciate the opportunity to make important clarifications regarding some common misunderstandings about the title insurance marketplace. The American Land Title Association (ALTA), is a strong proponent of providing consumers more time to review their documents before they close on their home.

First, title insurance provides homebuyers with confidence in the protection of their property rights. Unlike other insurance policies, title insurance is a one-time fee paid at closing. It helps protect a homeowner's financial investment in their property should a claim arise in the future. A claim could stem from things such as fraud, identity theft, property-line disputes and unpaid taxes. Without an owner's title insurance policy, the out-of-pocket legal costs for a homeowner to resolve a title claim – legitimate or not -- could be in the tens of thousands of dollars.

An owner's title insurance policy for a Minneapolis home purchased for \$500,000 is around \$1,300. Over the thirteen year average duration of home ownership,<sup>1</sup> that policy cost spreads out to about \$100 annually or about \$8.33 per month.

Secondly, ALTA believes that consumers deserve to receive their closing documents at least three days before they come to the closing table. This is why during the 111<sup>th</sup> Congress, prior to the TRID regulation being proposed and even before the CFPB came into existence, ALTA supported legislation to guarantee this right for consumers in the Borrowers Right to Inspect Closing Documents Act of 2009 (H.R. 4229).

We believe that an informed consumer makes the closing process smoother for all involved. We are hopeful that TRID's three day requirement will incentivize consumers to use this time to ask questions, address mistakes and changes in the documents, and talk with trusted advisors before they come to closing. We are concerned however, that consumers will not be able to make changes of their choosing without triggering a new mandatory three-day waiting period because of the inflexibility of the new TRID regulation. For example, it may require a new waiting period if within three days of the closing, a consumer decides they want to make a bigger down payment or switch from an adjustable rate loan product to a fixed rate product. We believe that consumers should be afforded the flexibility to make changes and get the deal that fits best for them instead of the deal that fits best for the regulation.

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<sup>1</sup> <http://eveonhousing.org/2013/01/latest-study-shows-average-buyer-expected-to-stay-in-a-home-13-years/>

**Question 2: Affiliated Business Data**

It is very surprising to me that ALTA claims to represent the title insurance industry yet has so little data on its members.

- Does ALTA represent the gamut of title insurance firms - independent unaffiliated title insurance firms, independent title insurance firms and affiliated title insurance firms, in addition to The Title Insurance Underwriters?
- Can you give me an estimate based upon percentage of non-underwriter members of ALTA who are engaged in what RESPA defines as "affiliated business arrangements"? In other words, what percentage of underwriter members have ABA's, or CBA's with lenders, realtor firms, RELO companies and Foreclosure firms?
- I have heard that in many states, underwriters direct operations through agreements with lenders to offer filed title insurance rates that are as much as 60 percent less than the rates they make available to independent agents. I would assume many of those independent agents belong to ALTA. Thus, those independent agents are at a disadvantage because they do not have access to a discount reissue rate. This seems like more powerful members receive an advantage that independent agencies do not receive. Does that not concern you?
- Can you tell me why you do not keep this data?
- ALTA was neutral on legislation such as the Mortgage Choice Act because that bill impacted, in ALTA's words, both affiliated members and independent members of your organization, correct? However, this highly controversial bill, which earned a veto threat from President Obama and probably lacks the votes to override the veto would seem central to your members. Why did ALTA not provide information on the financial issues at play for your members based on their controlled-business arrangement status?
- What methods did ALTA use to determine its members desire to remain neutral on the Mortgage Choice Act?

Response to Question 2

The American Land Title Association is the national trade association representing the title insurance and real estate settlement industry. ALTA's more than 5,500 member companies include title insurance companies, title and settlement agents, independent abstracters, title searchers and real estate attorneys. ALTA members have offices in every county in the United States. Our membership represents the diversity of the industry, including those companies that are part of what RESPA defines as an "Affiliated Business Arrangement."

ALTA does not track business relationships of our membership, including which of its members are engaged in what RESPA defines as "Affiliated Business Arrangements."

According to our bylaws, ALTA's mission, in part, is to "promote the safe and efficient transfer of ownership of, and interest in, real property within the free enterprise system. To provide information and education to its members; to those who regulate, supervise, or enact legislation affecting the land title industry; to consumers..." As with any trade association, we do this by providing information about legislation and regulation to our members so that they can determine the impact of policy proposals on their businesses.

When an issue is one that is contentious among our members (like the Mortgage Choice Act), we must represent our members' interests as a whole. That is why ALTA has not advocated for or against the Mortgage Choice Act. This is an issue where our membership has a divided viewpoint. Within our membership, there are vocal supporters and opponents of the bill. At the direction of our Board of Governors, which includes a broad cross section of the industry, ALTA continues to provide information to our members about any bill and responds to requests from our members about how they can advocate for or against the legislation. Even though we have not taken a position on the bill, ALTA continues to work to ensure Congress has accurate information about title insurance as they consider any piece of legislation and to correct misstatements.

**Question 3: Costs to consumers**

I am concerned about conflicts of interest in consumer products. It is wrong when information asymmetries lead to people paying too much or receiving inferior products.

Affiliated business arrangements are therefore troubling. Simple business arithmetic suggests that any business that parts with nearly half of its profits to support referrals of business must either control 100% of the marketplace or raise the cost of its services in order to continue making a comfortable profit margin.

- When a title insurance agency is referred business through an affiliated business arrangement, where does the cost of the referral get absorbed?
- Who pays for it?
- What does the consumer receive for the referral of business?

The cost of referral created by an affiliated business arrangement seems to be paid for by rising risk rates created by the industry to support the ever-increasing number of affiliations. I think it is only basic economics to believe that the industry supports the cost of affiliation by spreading it among independent, direct and affiliated participants under the guise of filed rates.

- I think that if you removed the incentive to participate in affiliations, the price of insurance would be lower because you would remove the cost of referral which is already sewn into the risk rate and competition in the title insurance industry would be healthier for all market participants.
- Would you agree with me? Why or why not?
- ALTA uses gross premium data available from the industry members to determine overall title insurance costs, correct?
- Last year, Mr. Chapman testified that nationwide title insurance costs have actually decreased 6.20% from 2003 to 2013 citing the title insurance industry premium data to substantiate that claim, correct?
- Title insurance premiums are computed on the basis of overall home and/or land values, correct?
- Those values rise and fall with the value of homes and land regardless of pricing mechanisms created by the title insurance industry, correct?

- Generally speaking, would you agree with me that nationwide home prices and land values have declined since the recent recession of 2008-2009? I am referring to overall numbers, not localized markets that might be higher.
- So the fact that title insurance premiums decreased because national home and land values declined during that time **does not mean** that the title insurance industry has actually affirmatively reduced the cost of insurance to its consumers, correct?
- In fact, the opposite condition is probably true – the title insurance industry continues to increase the risk rate of title insurance to make up for the loss of revenue and the impact of reverse competition, right?
- Title premiums are suggested to be result of careful analysis of costs and claims history, yet premium rates vary dramatically when comparison is made between such states as Texas, Pennsylvania and Iowa. Why is Iowa able to manage claims so much more efficiently than Texas or Pennsylvania?
- Title premiums vary between Minnesota, and its neighbors Iowa and Wisconsin. What geographic or market conditions exist that cause Minnesota homebuyers to pay higher premiums than its neighbors to the south and east?

Response to Question 3

We are not aware of any source to support your claim that the title industry “parts with nearly half of its profits to support referrals.” Section 8(a) of the Real Estate Settlement Procedures Act (RESPA) prohibits the payment of a fee for a referral of business. The law states, “No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.” We encourage anyone, including members of Congress, that are aware of and hold evidence of such an arrangement, to bring it to the attention of federal and state regulators.

According to RESPA, an Affiliated Business Arrangement is created when a “person who is in a position to refer business incident to or a part of a real estate settlement service” has an ownership interest of more than one percent in the provider of a settlement service. Pursuant to section 8 of RESPA, “the only thing of value” that the co-owner of an Affiliated Business Arrangement can receive “is a return on the ownership interest or franchise relationship.” This is no different than the shareholders of any corporation being able to share the businesses profits through dividends.

Our analysis of publicly available title insurance premium data cited by ALTA's Past President, Mr. Chapman, last year showed that the cost of title insurance has actually decreased 6.20% since 2003.<sup>1</sup> Your questions suggest a misunderstanding of the methodology used in that analysis which requires our clarification.

That analysis compared the total amount of insurance coverage issued versus the total premiums collected as reported on Schedule P Part 1 of the National Association of Insurance Commissioners Form 9 Annual Statement from 2003-2013. To control for variations in market conditions, including home values and inflation, the comparison held the amount of insurance coverage issued constant. In other words, the analysis showed that the cost consumers paid for the same amount of title insurance protection decreased by 6.2% since 2003.

Title insurance and its premium rates are regulated at the state level. Rates are different between states, such as Minnesota and Wisconsin, because state laws, court cases, real estate markets, and industry claims experiences are different. State regulation allows title insurance rates to match the unique characteristics of each marketplace, such as the cost to access, availability and quality of the public records (including tax assessor and mapping records), the prevalence of fraud in certain marketplaces, the frequency of changes to real property laws, the costs of doing business in each state (including rent, taxes and employee compensation), etc.

By statute, title insurance prices cannot be excessive, inadequate, or unfairly discriminatory. Rates are specific to and based upon the size of the transaction and are based on an extensive set of actuarial data related to five cost considerations, including:

(1) maintenance and updating of title information; (2) searching and examining title to the property; (3) clearing defects to title discovered during the search and examination when possible; (4) paying losses for covered title claims, which includes sufficiently reserving to pay future claims; and (5) allowing for a reasonable return on capital.



**Question 4: Financial benefit for referral**

The Real Estate Settlement Procedures Act (RESPA) prohibits a financial benefit for a referral. Yet, there are so many ways that realtors, homebuilders, lenders and mortgage brokers benefit from a referral. A way that is currently legal – a shared ownership interest – and ways that are currently illegal but practiced – lower desk rents or bonuses for realtors, special event tickets.

We would be shocked to learn that dentists could receive a benefit from referring a client to an orthodontist. Or that a lawyer received a financial benefit from referring to another lawyer. In fact, for both of those, doing so would be illegal.

- Why should referral sources like lenders, mortgage brokers, or real estate firms/agents be allowed to receive payment for the referral of settlement service business?
- Do you think the overall cost of a referral, as those are used in the affiliated business arrangement business structure, is included in the cost of operating a title insurance agency?
- In your testimony, you noted that RESPA prohibits a financial benefit for a referral. You noted that stepped up oversight of the Consumer Financial Protection Bureau and State agencies. If we are to root out the “bad apples” and end reverse competition, we need more oversight. That is why I support a private right of action for competitors. Homebuyers themselves are unlikely to discover that a kickback was made. Competitors, on the other hand, are more likely to be in a position to discover who is providing kickbacks etc. Would ALTA support a private right of action for competitors to remove the pressure title insurance agents feel to provide financial benefits to their referral sources?
- The law only provides a one year statute of limitations. This is inadequate for robust oversight. Does ALTA support a 3-year statute of limitations?
- Has ALTA taken a position on my bill, The Ensure Fair Prices in Title Insurance, (H.R. 1799)? It prohibits a financial benefit for referrals, provides a private right of action, and extends the statute of limitations to three years.
- If ALTA has not taken a position yet, what methods will ALTA utilize to determine its members position on HR 1799?

Response to Question 4

As you note, RESPA states that, "No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person." This prohibition on the payment of referral fees is enforced by the Consumer Financial Protection Bureau (CFPB), state attorneys general and insurance commissioners, and consumers, who have a private right of action.

ALTA and our members support the strong and effective enforcement of RESPA. Those companies and individuals that violate RESPA should be held accountable for the sake of consumers and the real estate industry professionals who work to remain compliant with state and federal regulations.

Due to their position in the marketplace, industry participants routinely work with regulators to report violations of federal and state law. Nearly a decade ago, ALTA supported the notion of a private right of action for competitors. This was due to the feeling among the membership that enforcement of RESPA by federal regulators was lacking.

The creation of the CFPB changed the enforcement landscape, and CFPB enforcement of RESPA is quite effective. The CFPB settled fourteen RESPA enforcement actions in the past three years, including violations of the anti-kickback and affiliated business provisions. State regulators also actively enforce RESPA as part of their market conduct examination process. Given this new reality, and that generally a private right of action is a costly and inefficient enforcement mechanism, the need for a competitor's private right of action has not been a topic of discussion amongst our members at this time.

Regarding H.R. 1799, we will evaluate this bill as we evaluate all legislation: by consulting our members. No industry is a monolith. Often, there are as many viewpoints as there are participants. As stated in my response to the second questions, a trade association takes a position on legislation when it unfairly harms or benefits the industry as a whole and not when legislation impacts the method of competition within the industry. Our leadership, as elected and appointed by the membership of our association, will weigh these factors and determine if we will take a position as appropriate.

KEITH ELLISON  
5TH DISTRICT, MINNESOTA  
  
2263 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-4755

2100 PLYMOUTH AVENUE NORTH  
MINNEAPOLIS, MN 55411  
(612) 522-1212

ellison.house.gov  
TWITTER: @keithellison



CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES

July 10, 2015

CHIEF DEPUTY WHIP  
CO-CHAIR CONGRESSIONAL  
PROGRESSIVE CAUCUS

FINANCIAL SERVICES COMMITTEE  
SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS  
SUBCOMMITTEE ON CAPITAL MARKETS AND  
GOVERNMENT SPONSORED ENTERPRISES  
SUBCOMMITTEE ON  
HOUSING AND INSURANCE

Ms. Diane Evans  
American Land Title Association  
1800 M Street, NW, Suite 300S  
Washington, D.C. 20036-5828  
*via email*

Dear Ms. Evans,

I am writing in connection with your responses to questions I submitted for the record arising from the Subcommittee of Housing and Insurance of the Financial Services Committee hearing on May 14, 2015. I believe your answers were incomplete. As you know, as part of your Truth in Testimony requirement, witnesses are required to respond to questions from members of the Committee.

In your response, numerous questions were not answered. I request that you please respond to each of the below question individually. I am providing these questions to you in Microsoft Word to make it easier for you to respond.

Additionally, please submit data and methodology in support of your assertion that title insurance costs have come down in recent years. The partial response to my previous request for this information was merely a link to volumes of public data without suggestion as to the methodology of your analysis or identification of specific report to support your claim.

Please respond by close of business on June 15, 2015.

Sincerely,

  
Keith Ellison

**Questions for the Record**

**Submitted to Ms. Diane Evans, American Land Title Association (ALTA)**  
 “TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process”

**Subcommittee on Housing and Insurance**

**May 14, 2015**

I appreciate your participation in the Hearing on TILA-RESPA Integrated Disclosure. It takes years for families to save up to buy a house. When costs are inflated – which research shows they are in title insurance which is the largest cost outside of the mortgage – we make it more difficult for families to buy homes. This overpriced opaque market hurts our families, our communities and our economy.

**Question Group 1: Fair Process for home buyers**

1. ALTA has asserted that consumer protection is afforded by ALTAs encouragement to its members to comply with all laws and regulations. What monitoring procedure is in place to affect such compliance?
2. ALTA has asserted that consumer protection is afforded by ALTA’s encouragement to its members to comply with all laws and regulations. What disciplinary procedure is in place respond to non compliance??

**Question Group 2: Affiliated Business Data**

1. It is very surprising to me that ALTA claims to represent the title insurance industry yet has so little data on its members. I have heard that in many states, underwriters direct operations through agreements with lenders to offer filed title insurance rates that are as much as 60 percent less than the rates they make available to independent agents. I would assume many of those independent agents belong to ALTA. Thus, those independent agents are at a disadvantage because they do not have access to a discount reissue rate. This seems like more powerful members receive an advantage that independent agencies do not receive. Does that not concern you?

**Question Group 3: Costs to consumers**

1. When a title insurance agency is referred business through an affiliated business arrangement, where does the cost of the referral get absorbed? Who pays for it?
2. What does the consumer receive for the referral of business?
3. I think that if you removed the incentive to participate in affiliations, the price of insurance would be lower because you would remove the cost of referral which is already

sewn into the risk rate and competition in the title insurance industry would be healthier for all market participants. Would you agree with me? Why or why not?

4. Please provide the actual data and methodology for the study on title insurance costs. Last year, Mr. Chapman testified that nationwide title insurance costs have actually decreased 6.20% from 2003 to 2013.

5. Title insurance premiums are computed on the basis of overall home and/or land values. Those values rise and fall with the value of homes and land regardless of pricing mechanisms created by the title insurance industry. Nationwide home prices and land values have declined since the recent recession of 2008-2009? So the fact that title insurance premiums decreased because national home and land values declined during that time **does not mean** that the title insurance industry has actually affirmatively reduced the cost of insurance to its consumers, correct?

In fact, the opposite condition is probably true – the title insurance industry continues to increase the risk rate of title insurance to make up for the loss of revenue and the impact of reverse competition, right?

6. Title premiums are suggested to be result of careful analysis of costs and claims history, yet premium rates vary dramatically when comparison is made between such states as Texas, Pennsylvania and Iowa. Why is Iowa able to manage claims so much more efficiently than Texas or Pennsylvania? Please be specific.

7. Title premiums vary between Minnesota, and its neighbors Iowa and Wisconsin. What geographic or market conditions exist that cause Minnesota homebuyers to pay higher premiums than its neighbors to the south and east? Please be specific about why Minnesota home buyer costs are higher than Iowa or Wisconsin.

#### **Question Group 4: Financial benefit for referral**

The Real Estate Settlement Procedures Act (RESPA) prohibits a financial benefit for a referral. Yet, there are so many ways that realtors, homebuilders, lenders and mortgage brokers benefit from a referral. A way that is currently legal – a shared ownership interest – and ways that are currently illegal but practiced – lower desk rents or bonuses for realtors, special event tickets.

We would be shocked to learn that dentists could receive a benefit from referring a client to an orthodontist. Or that a lawyer received a financial benefit from referring to another lawyer. In fact, for both of those, doing so would be illegal.

1. Why should referral sources like lenders, mortgage brokers, or real estate firms/agents be allowed to receive payment for the referral of settlement service business?

2. Do you think the overall cost of a referral, as those are used in the affiliated business arrangement business structure, is included in the cost of operating a title insurance agency?
3. The law only provides a one year statute of limitations. This is inadequate for robust oversight. Does ALTA support a 3-year statute of limitations?

AMERICAN  
LAND TITLE  
ASSOCIATION



July 15, 2015

The Honorable Keith Ellison  
United States House of Representatives  
2263 Rayburn House Office Building  
Washington, D.C. 20515

Dear Representative Ellison,

Thank you for reaching out to Ms. Evans in connection with her testimony before the Subcommittee of Housing and Insurance of the Financial Services Committee in the hearing entitled "TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process," held on May 14, 2015, and her responses to the questions you submitted for the record. Ms. Evans appreciated the opportunity to testify at this hearing and to provide you with additional information about the title insurance industry in her response to your questions.

The answers Ms. Evans submitted on July 6<sup>th</sup> in response to your questions were in full accordance with the rules of the House of Representatives and the Committee on Financial Services. A copy of those responses is attached for your reference.

The American Land Title Association looks forward to continuing to work with Congress to ensure that homebuyers are protected throughout the real estate settlement process. Should you have any questions about this letter or the responses, please do not hesitate to contact me at [sgottheim@alta.org](mailto:sgottheim@alta.org) or 202-296-3671.

Sincerely,

/Steven Gottheim/

Steven Gottheim  
Counsel  
American Land Title Association

May 5, 2015

The Honorable Steve Pearce  
United States Representative  
2432 Rayburn House Office Building  
Washington, DC 20515

The Honorable Brad Sherman  
United States Representative  
2242 Rayburn House Office Building  
Washington, DC 20515

Dear Representatives Pearce and Sherman:

The undersigned organizations thank you for introducing H.R. 2213, which will provide a reasonable hold-harmless period through the end of the year following the August 1 effective date of the Consumer Financial Protection Bureau's TILA-RESPA Integrated Disclosures (TRID) regulation.

We share the Bureau's goal that these new disclosures help consumers better understand their terms when they buy a home or refinance their mortgage. Stakeholders are rewriting business processes, upgrading software and training staff to comply with the 1,888-page regulation. Unfortunately, stakeholders are not able to test the processes used to develop these new disclosures in real-life transactions before the implementation date. And, covered loans originated prior to August 1<sup>st</sup> will need to follow the old rules and forms through loan closing, which creates an environment ripe for human errors. We know from implementing past regulations that unforeseen issues will arise in actual transactions. Therefore, a formal hold-harmless period through December 31 will allow stakeholders to make a good-faith effort to comply with the TRID regulation without the fear of potential enforcement actions or lawsuits.

A hold-harmless period allows the Bureau to work with industry to gather data about implementation and provide written guidance to address common industry implementation hurdles that emerge between now and the end of the year. Without more clarity, the result is likely to leave homebuyers with less flexibility to buy and close on a home on their terms and potentially fewer companies to work with.

Sincerely,

American Bankers Association  
American Escrow Association  
American Land Title Association  
Appraisal Institute  
Community Home Lenders Association  
Consumer Bankers Association  
Consumer Mortgage Coalition  
Community Mortgage Lenders of America  
Credit Union National Association

Housing Policy Council of the Financial Services  
Roundtable  
Independent Community Bankers of America  
Mortgage Bankers Association  
National Association of Federal Credit Unions  
National Association of Home Builders  
National Association of Realtors  
Real Estate Services Providers Council, Inc.  
(RESPRO\*)

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